Supreme Court, U.S.
FILED

96 197 JUL 9 1996

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1995

Colonel DONALD I. REHMAN (Ret.),

Petitioner,

v.

GARWOOD, MCKENNA, MCKENNA, and WOLF, P.A., An Orlando, FL Law Firm, ALLEN J. MCKENNA, Esquire, THOMAS C. GARWOOD JR., Esquire & THEODORE R. BAUMGARDNER, Esquire,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Florida

PETITION FOR WRIT OF CERTIORARI

COLONEL DONALD I. REHMAN (Ret.)
1390 Windy Ridge Court
Longwood, FL 32750-4501
(407) 260-0690
Petitioner Pro Se

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

49 pp

QUESTIONS PRESENTED

1. Whether citizens of the United States are in effect constitutionally deprived of adequate due process appellate rights, when a State Appellate Court merely "per curiam affirms" State Trial Court actions that were the result of, or alleged to be for the Defendants the "fruits of" a deprivation of Plaintiff Federal Constitutional rights, which in the record can plainly be seen as having occurred at State Trial Court level; when such an appellate "per curiam affirmed" order automatically eliminates any appeal to the Supreme Court of that State because that Court has established State Case Law which gives such effect to lower tribunal "per curiam affirmed" orders.

2. Whether citizens of The United States of America, who conduct their own civil cases personally as pro se, automatically forfeit in State Courts entitlement to equal protection under the law, to due process, and to any beneficial application of "on-point" controlling precedent Federal and State case law, as a consequence of not being represented by counsel.

3. Whether Florida citizens who have civil cases in Florida State Courts have any entitlement to protection under the "Supremacy Clause" of the United States Constitution Article VI, such that Florida State Courts are required to recognize, adhere to, and abide by, the tolling provision for State Statutes of Limitations which is mandated by 28 U.S.C. § 1367(d).

QUESTIONS PRESENTED – Continued

4. Whether a plaintiff's case in a Florida State Trial Court can automatically be dismissed upon a defendants' Motion to Dismiss supposedly based upon Florida State Statute of Limitations, but that Court intentionally not considering the plaintiff's timely filed objection which asserts that the provisions of 28 U.S.C. § 1367(d) tolled the Florida State Statute of Limitations.

5. Whether it is the "settled" Supreme Law of the State of Florida that any defense of Collateral Estoppel invoked by a defendant in a Florida civil tort case to attempt to dismiss it, requires that the Collateral Estoppel subject matter **and** the party/parties in a prior litigation must have been identical to that in the litigation where Collateral Estoppel is invoked; and, whether, if a Florida Trial Court ignores such Florida State law on Collateral Estoppel, it unconstitutionally deprives a plaintiff of equal treatment under the law and/or results in an unconstitutional denial of due process.

6. Whether a Florida State Trial Court in a defamation case pending before it, upon which the Presiding Judge had already ordered trial, can, when a Successor Judge takes over the case, ignore the existing "law of the case" by taking Judicial Notice, over the timely filed objections of the plaintiff, of a disputed matter between other parties which is then on appeal from a Federal Trial Court to a Federal Appellate Court, to which Defendants in that State Court are not and never were a party, then use such Judicial Notice of a disputed matter on Federal appeal to invoke State Trial Court collateral estoppel and dismiss the State defamation case; and whether such Judicial

QUESTIONS PRESENTED – Continued

Notice of disputed facts action by the State Court constitutes an unconstitutional denial of due process to the plaintiff by that State Court and an unconstitutional deprivation of equal treatment under Federal and State case law which permits Judicial Notice only of "settled matters".

7. Whether, when a Federal Trial Court denies its leave to permit a plaintiff to file a supplemental jurisdiction State defamation claim, thereby declining to exercise jurisdiction over such a State defamation claim even though it is related to a 31 U.S.C. § 3730(h) claim over which the court has exercised original Federal jurisdiction, does the defamation claim still retain an identification as a Supplemental Jurisdiction claim such that the tolling provisions of 28 U.S.C. 1367(d) will apply if it is then timely filed in a State Court.

8. Whether additional parties who are identified as additional defendants in a timely filed defamation claim as it is filed in State Court, after a Federal Trial Court refused to exercise jurisdiction over it as a Federal Court supplemental jurisdiction claim, can be dismissed as Defendants at the State Court because they were not named as Defendants while the defamation claim was being pursued at the Federal Court; and whether such dismissal imposes an unconstitutional denial of due process upon the plaintiff.

9. Whether there is a Constitutional guarantee to due process which entitles litigants, in any Federal and State Court, to have their cases heard by presiding judges who

QUESTIONS PRESENTED – Continued

are unbiased and who possess the attributes of a qualified and capable Judge; and whether there is a nullification of due process and/or nullification of other Constitutional guarantees under the following circumstances:

> The judge whom a pro se's case is in progress before, is convicted of a criminal offense in a public trial by jury, resulting in enormous pretrial and post-trial unfavorable publicity to the judge, and adverse public reaction against the judge; and whether this results in the judge losing some or all of the judicial attributes which are guaranteed to litigants under due process, thereby mandating there be judicial disqualification from the pro se's case.

LIST OF ALL PARTIES

All parties appear in the caption of the case on the cover page.

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OPINIONS BELOW

The opinion of the highest state court to review the merits appears at **Appendix A** to the petition and is unpublished.

The opinion of the State Trial Court appears at **Appendix B** to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was April 18, 1996. A copy of that decision appears at **Appendix C.**

A timely petition for rehearing (reinstatement) was thereafter denied on the following date: June 10, 1996, and a copy of the order denying rehearing (reinstatement) appears at **Appendix D.**

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment 9:

> [T]he enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.[1]

[1] Rehman has a good faith belief that due process rights are retained by the people.

United States Constitution, Amendment 14, Section 1:

> . . . . [N]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.[2]

28 U.S.C. §1367(d):

> [T]he period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.[3]

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[2] Rehman has a good faith belief that under this provision of the Constitution, State Courts cannot discriminate against pro se persons nor deny to them the application of favorable controlling precedent case law. Further, State Courts cannot apply State Statute of Limitations to a case that is governed by Federal Law; in particular by 28 U.S.C. §1367(d).

[3] The Court is respectfully requested to note that in the decision of the State Trial Court at Appendix B hereto, in dismissing the defamation claim against Defendants Baumgardner and Garwood the Trial Court declares: [T]he Court makes no determination as to whether Plaintiff's prior federal court action was a "supplemental action" as that term is referred to in 28 U.S.C. Section 1367. (Then the Court goes on to dismiss the claim because supposedly the State Statutes of Limitations expired; without applying 28 U.S.C. §1367(d), when it clearly tolled the State Statute of Limitations and was timely asserted by Rehman during Trial court proceedings.)

STATEMENT OF THE CASE

In 1989, Rehman, whose Biographical Sketch is contained at **Appendix E** hereto, became an employee of ECC International Corp. (hereinafter "ECC"), a Defense Contractor having its main facility in Orlando, Florida. RESPONDENTS in this Petition are the Attorneys for that Employer.

Shortly after commencing his ECC employment, Rehman detected defense contract fraud in the ECC workplace. The adverse events that then occurred to Rehman, are summarized in the one page flowchart contained at **Appendix F** hereto. Rehman, after being fired by ECC in 1990, for engaging in "protected activity" under 31 U.S.C. §3730(h), and for repeatedly refusing to participate in that defense contract fraud, filed a lawsuit for wrongful termination of employment in Federal Court. ECC appealed the denial of summary judgment to the Eleventh Federal Circuit Court of Appeals, the United States Government (Department of Justice) entered the case as Amicus Curiae in support of Rehman's position, and the ECC appeal was subsequently dismissed. During more than six (6) years of Federal Court litigation on Rehman's lawsuit, the RESPONDENTS in this Petition, who are attorneys for ECC, filed ten (10) equivalent Motions for Summary Judgment.[4] Their last Motion for Summary Judgment resulted in the Federal Magistrate Judge's Report and Recommendation contained at **Appendix G** hereto, the Presiding Federal Judge's Order adopting it, contained at **Appendix H** hereto, and the Federal trial

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[4] Some were disguised as Motions in Limine.

remains set for January 1997 per the Order contained at **Appendix I** hereto.

During discovery in the Federal lawsuit, ECC refused to furnish names and addresses of certain former employees, but on a Motion to Compel filed by Rehman, the Federal Court so ordered. Just before furnishing the Court ordered names and addresses to Rehman, the RESPONDENTS here wrote and sent letters to the 108 persons, portraying Rehman in such a vile manner so as to create revulsion towards him and to make vile assertions relating to his reputation, principles, and character. Additionally, RESPONDENTS here knowingly sanctioned the creation and delivery of a false and defamatory document to the United States Government, intended to intentionally adversely portray Rehman as having supposedly been fired from ECC for misconduct, when no such event had ever occurred, for the purpose of discrediting and defaming Rehman. Rehman attempted to bring a Defamation claim against RESPONDENTS in Federal Court; however, it declined to exercise jurisdiction.[5]

Ultimately, Rehman timely filed a Defamation lawsuit in State Court. The presiding Judge denied RESPONDENTS' Motion for Summary Judgment, copy of Order at **Appendix J** hereto, and trial on Rehman's Defamation Claim was scheduled, copy of Order at **Appendix K** hereto. Immediately thereafter, a State Circuit Court Judge, who had been arrested for a criminal offense and

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[5] The details of all that occurred at the Federal Court on the Defamation subject matter are lengthy, and will be fully described and documented in a Brief on the Merits if this Court grants Rehman's Petition for Writ of Certiorari.

was pending trial in that matter was taken out of the Circuit's Domestic Court, transferred to Civil Division and assigned to Rehman's Defamation Case. That Judge was convicted in a public trial by jury, see document at **Appendix L** hereto, and almost immediately thereafter all Rehman's litigation in State Court began to rapidly deteriorate (retaliation by the Judge, against Rehman who was pro se, for the Judge's criminal conviction by jury of citizens like Rehman) whereby the convicted judge disregarded all that had gone before and Rehman's Defamation Case went from "scheduled for trial" to a "thrown out of Court" status as reflected in the Trial Court's decisions at **Appendix B** hereto. In so doing, the Trial Court caused Rehman to be denied due process, caused him not to be given equal treatment under the law, and deprived him of beneficial controlling precedent case law.[6]

Upon appeal of the matter to the District Court of Appeal of the State of Florida for the Fifth District (5DCA), although Rehman timely raised the constitutional due process, equal treatment under the law, controlling precedent case law, and disqualification of the Judge issues, all were disregarded completely in a simple "per curiam affirmed" order from that Appellate Court. Effectively that blocked any entitlement by Rehman to review of the matter at The Supreme Court of Florida. This raises a perplexing situation of whether a Citizen of

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[6] The details of all that occurred at the State Court on the Defamation subject matter are lengthy, and will be fully described and documented in a Brief on the Merits if this Court grants Rehman's Petition for Writ of Certiorari.

the United States is in effect constitutionally deprived of due process when a State Appellate Court refuses to address a deprivation of Federal Constitutional rights which by the record it can plainly see occurred at a State Trial Court, and was timely asserted there by Petitioner.

a. Both the Trial Court (9th Circuit Court) and the 5th District Court of Appeal have refused to recognize and apply the tolling of Florida State Statutes provisions of 28 U.S.C. §1367(d); thereby causing to Rehman a deprivation of his fundamental due process rights, which violates the Supremacy of Federal Laws mandated by Article VI (2) [*Supremacy of the National Government*] of the United States Constitution.

b. Both the Trial Court and the 5th District Court of Appeal have refused to recognize, adhere to, and apply "on point" Case Law, of **The Florida Supreme Court,** on the subject of **Collateral Estoppel,** such as is promulgated in:

Supreme Court of Florida Case No. 82,097 *The Florida Bar v. Peter Charles Clement* decided November 2, 1995 in which The Florida Supreme Court has ruled that, in the State of Florida, Collateral Estoppel **cannot exist unless the parties and subject matter are identical.**

c. Both the Trial Court and the 5th District Court of Appeal have refused to recognize, and apply "on point" Case Law, of *Silver v. Levinson*, 20 Fla. L. Weekly D119, 4 DCA, Case No. 94-1092, 28 Dec 94; in which 4DCA is believed to be the first and only State Appellate Court to declare that lawyers, even when acting for or on behalf of their clients, do not have any privilege against defamation when not in a judicial forum.

d. Both the Trial Court and the 5th District Court of Appeal have refused to recognize, and apply, **The Florida Supreme Court** standards for granting Summary Judgment, in that there must be no genuine issue as to any material fact and the moving party entitled to judgment as a matter of law; despite the fact that "the law of this case", as pronounced by The Honorable W. Rogers Turner, Trial Court Judge, ruled that there were genuine issues of material fact, Defendants were not entitled to Summary Judgment, and Judge Turner scheduled trial. Further, 5DCA refused to apply its own case law on Summary Judgment to wit:

> ***FIFTH DISTRICT COURT OF APPEAL, 5DCA CASE 95-201, BRUCE WATSON AND JOYCE WATSON v. TRUMAN HAHN, DECIDED ON DECEMBER 8, 1995, IN WHICH 5DCA SET FORTH SOME SPECIFIC REQUIREMENTS IN ORDER FOR A SUMMARY JUDGMENT TO BE UPHELD ON APPEAL; AND 5DCA SAID THAT THE RECORD MUST CLEARLY SHOW THAT THERE IS NO QUESTION OF MATERIAL FACT, AND THAT THE APPELLEE IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.***

Rehman did not receive **equal treatment under the law** and was **denied constitutional due process,** by The Trial Court Successor Judge granting Summary Judgment without ever addressing any matter pertaining to the existence or nonexistence of genuine issues of material fact, and 5DCA affirming Summary Judgment knowing there are genuine issues of material fact; when "THE LAW OF THE CASE" clearly had been established and declared by the Predecessor Trial Court Judge, that there were genuine issues of material fact which necessitated

trial by jury; and that judgment was never vacated by the Successor Judge and all matters related to genuine issues of material fact were ignored by the Successor Judge; all to the constitutional due process detriment of Rehman.

REASONS FOR GRANTING THE PETITION

Whistleblowers throughout the United States in the private sector, who serve the public good and in the public's interest by courageously reporting/exposing defense contract fraud in the workplace, being committed by their employers against the Government of the United States of America, will by employer retaliation when it is perpetrated by and through their attorneys, have their professional careers destroyed and their personal and professional reputations decimated, with no recourse in the courts because certain courts have given attorneys inappropriate privilege against defamation even when perpetrated in non-judicial forums.

In *Rosenblatt v. Baer*, 383 U.S. 75, 86 (1966)[7] Associate Supreme Court Justice, The Honorable Potter Stewart, wrote:

> [B]ut there is also another side to the equation; we have regularly acknowledged the "important social values which underlie the law of defamation," and recognize that "[s]ociety has a pervasive and strong interest in preventing and redressing attacks upon reputation."

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[7] Reiterated in *Milkovich v. Lorain Journal Company*, U.S. Supreme Court Case 89-645, June 21, 1990.

"The right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being – a concept at the root of any decent system of ordered liberty.

"The destruction that defamatory falsehood can bring is, to be sure, often beyond the capacity of the law to redeem. Yet, imperfect though it is, an action for damages is the only hope for vindication or redress the law gives to a man whose reputation has been falsely dishonored." Id., at 92-93.

Although United States Citizens have the Constitutional Right to represent themselves as pro se in any Court throughout the entire United States of America, when they choose to do so in an honorable and competent fashion, they thereby may be intentionally made to unconstitutionally suffer loss of due process, loss of equal protection under the law, and loss of the benefit of all favorable controlling precedent case law; all inflicted upon them solely by virtue of their choosing to be unrepresented by counsel.

This case represents such an outrageous occurrence of injustice, and raises such oppressive circumstances, that it cries out for the judgment from this Court. The potential for daily recurrence of "unconstitutional harm" to other citizenry of the United States, such as happened in this case, gives rise to the essentiality of this Honorable Court granting this Petition, so that it may advance the

cause of justice throughout this Land, wherever there now exists a need for such judicial eloquence.

CONCLUSION

The petition for a writ of certiorari should be granted.

WHEREFORE, PETITIONER Rehman respectfully requests this Court to grant this Petition.

Respectfully submitted,

DONALD I. REHMAN
1390 Windy Ridge Court
Longwood, FL 32750
(407) 260-0690
Petitioner Pro Se

APPENDIX A

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA

FIFTH DISTRICT — JANUARY TERM 1996

DONALD I. REHMAN

Appellant.

v.

GARWOOD McKENNA & McKENNA. P.A., etc., et al.,

Appellees.

_____/

NOT FINAL UNTIL THE TIME EXPIRES TO FILE REHEARING MOTION, AND, IF FILED, DISPOSED OF.

CASE NO. 95-1086

Decision Filed February 20, 1996

Appeal from the Circuit Court
for Orange County.
Linda A. Gloeckner, Judge.

Donald I. Rehman. Longwood.
pro se.

John E. Dubose, Jr., of Woolfolk, Estes, Keough & Dubose, P.A., Orlando, for Appellees.

PER CURIAM.

AFFIRMED.

PETERSON, C.J., DAUKSCH and COBB, J.J., concur.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

DONALD I. REHMAN,
Appellant,

v.

CASE NO. 95-1086

GARWOOD, MCKENNA & MCKENNA, P.A., etc., et al.,
Appellee.

_____/

DATE: April 2, 1996

BY ORDER OF THE COURT:

ORDERED that Appellant's MOTION FOR REHEARING, and Appellant's MOTION FOR EN BANC REHEARING, filed March 1, 1996, are denied.

(SEAL)

I hereby certify that the foregoing is (a true copy of) the original court order.

/s/ Frank J. Habershaw
FRANK J. HABERSHAW, CLERK
BY: _____
Deputy Clerk
(COURT SEAL)

cc: Donald I. Rehman
John E. Dubose, Jr., Esq.

APPENDIX B

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO.: CI 94-3776

DONALD I. REHMAN,

Plaintiff,

vs.

GARWOOD, McKENNA & McKENNA, P.A., ALLEN J. McKENNA, THOMAS C. GARWOOD, JR, and THEODORE R. BAUMGARDNER,

Defendants.

_____/

ORDER GRANTING DEFENDANTS ALLEN J. McKENNA AND GARWOOD, McKENNA & McKENNA, P.A.'S MOTION FOR SUMMARY JUDGMENT AND ENTERING SUMMARY FINAL JUDGMENT

THIS CAUSE having come before the Court on March 16, 1995 on the Motion for Summary Judgment of Defendants, ALLEN J. McKENNA and GARWOOD, McKENNA & McKENNA, P.A., and the Court, having heard argument of Plaintiff and of Defendants' counsel, having reviewed the Court file, and otherwise being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED:

1. The Court finds that Plaintiff's action is barred by the applicable statute of limitations, *Florida Statutes* Section 95.11(4)(g). Plaintiff's 1992 action filed in the United States District Court for the Middle District of Florida

was not a "supplemental action" as that term is defined in 28 U.S.C. Section 1367 and, consequently, the tolling provision of said statute does not apply to the instant action. Because the above-captioned case was filed in this Court after the expiration of the statute of limitations, Plaintiff's action against these Defendants is time barred.

2. The Court also finds that the Order of the United States District Court for the Middle District of Florida entered on May 17, 1993 in Plaintiff's action filed in that Court, Case Number 90-425-CIV-ORL-22, collaterally estops Plaintiff from relitigating the issue of the alleged defamatory nature of the 108 letters referred to in Plaintiff's Amended Complaint. The District Court determined they were not and Plaintiff is estopped from relitigating that issue in this Court.

3. Summary Final Judgment, therefore, is entered in favor of Defendants, ALLEN J. McKENNA and GARWOOD, McKENNA & McKENNA, P.A., and against Plaintiff, DONALD I. REHMAN, and Defendants, ALLEN J. McKENNA and GARWOOD, McKENNA & McKENNA, P.A., shall go hence without day. Costs will be taxed upon appropriate Motion and hearing.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida this _____ of March, 1995.

Original Signed Apr. 20, 1995
LINDA A. GLOECKNER,
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail Delivery to **JOHN E. DUBOSE, JR., ESQUIRE,** Post Office Drawer 3751, Orlando, Florida 32802 and to **DONALD I. REHMAN, PRO SE,** 1390 Windy Ridge Court, Longwood, Florida 32750 this _____ day of March, 1995.

_____

JUDICIAL ASSISTANT

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY,
FLORIDA

CASE NO.: CI 94-3776

DONALD I. REHMAN,

Plaintiff,

vs.

GARWOOD, McKENNA & McKENNA, P.A.,
ALLEN J. McKENNA, THOMAS C. GARWOOD, JR,
and THEODORE R. BAUMGARDNER,

Defendants.

_____/

ORDER GRANTING DEFENDANTS THEODORE R. BAUMGARDNER AND THOMAS C. GARWOOD, JR.'S MOTION FOR SUMMARY JUDGMENT AND ENTERING SUMMARY FINAL JUDGMENT

THIS CAUSE having come before the Court on March 9, 1995 on Defendants THEODORE R. BAUMGARDNER and THOMAS C. GARWOOD, JR.'s Motion for Summary Judgment and the Court, having heard argument of Plaintiff and of Defendants' counsel, having reviewed the Court file, and otherwise being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED:

1. The Court makes no determination as to whether Plaintiff's prior federal court action was a "supplemental action" as that term is referred to in 28 U.S.C. Section 1367. Defendants, THEODORE R. BAUMGARDNER and THOMAS C. GARWOOD, JR., have never been named as

Defendants in any of Plaintiff's federal court actions and were not named as parties in the above-captioned action in this Court until September 16, 1994. Clearly the statute of limitations applicable to this action for defamation, *Florida Statutes* section 95.11(4)(g), expired prior to the filing of Plaintiff's Amended Complaint on September 16, 1994 and such an amendment does not relate back to the filing of any previously filed Complaints. *See Frankowitz v. Propst*, 489 So. 2d 51 (Fla. 4th D.C.A. 1986); *Gray v. Executive Drywall, Inc.*, 520 So. 2d 619 (Fla. 2d D.C.A. 1988); and *R.A. Jones & Sons, Inc. v. Holman*, 470 So. 2d 60 (Fla. 3d D.C.A. 1985).

2. Summary Final Judgment, therefore, is entered in favor of Defendants, THEODORE R. BAUMGARDNER and THOMAS C. GARWOOD, JR., and against Plaintiff, DONALD I. REHMAN, and Defendants, THEODORE R. BAUMGARDNER and THOMAS C. GARWOOD, JR., shall go hence without day. Costs will be taxed upon appropriate Motion and hearing.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida this _____ of March, 1995.

Original Signed April 20, 1995
LINDA A. GLOECKNER,
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail Delivery to **JOHN E. DUBOSE, JR., ESQUIRE,** Post Office Drawer 3751, Orlando, Florida 32802 and to **DONALD I. REHMAN, PRO SE,** 1390 Windy Ridge Court, Longwood, Florida 32750 this _____ day of March, 1995.

_____

JUDICIAL ASSISTANT

APPENDIX C

SID J. WHITE, CLERK
SUPREME COURT OF FLORIDA
500 SOUTH DUVALL STREET
TALLAHASSE 32399-1927
(904) 488-0125

Mr. Donald I. Rehman
1390 Windy Ridge Court
Longwood, Florida 32750

4/18/96 filed 4/15/96

DONALD I. REHMAN
V.
GARWOOD, MCKENNA,
& MCKENNA,
P.A., ETC., ET AL.

CASE NO. 87,744
DCA-5 NO. 95-1086

I have this date received the below-listed pleadings or documents:

Notice of Appeal.

Your Petition for Writ of Certiorari has been treated as a Petition for Review

$250.00 Filing Fee, receipt no. R-960546.

Please made reference to the case number in all correspondence and pleadings.

Most cordially,
/s/ Sid J. White
Clerk, Supreme Court

ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

SJW/bh
cc: Hon. Frank J. Habershaw, Clerk
Mr. John E. DuBose, Jr.

SUPREME COURT OF FLORIDA

THURSDAY, APRIL 18, 1996

DONALD I. REHMAN, Petitioner/Appellant, vs. GARWOOD, MCKENNA & MCKENNA, P.A., ETC., ET AL., Respondents/Appellees.	*	CASE NO. 87,744 District Court of Appeal, 5th District – No. 95 - 1086

The Supreme Court of Florida does not have common law certiorari jurisdiction. Art. § 3, Fla. Const. The "Petition for Common Law Certiorari will, therefore, be treated as a petition for discretionary review and/or appeal. *See* Fla. R. App. P. 9.040(c).

Because no jurisdictional basis has been alleged to support the petition for discretionary review of the appeal, this case is hereby dismissed.

The appeal is subject to reinstatement if jurisdiction is established on proper motion filed within fifteen days from the date of this order. *See* Art. V, § 3(b)(1), Fla. Const.

No motion for rehearing or for clarification may be filed in the Court addressed to the denial of the petition for discretionary review. *See* Fla. R. App. P. 3.330(d).

See Vetrick v. Hollander, 464 So.2d 552.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court
By: /s/ (Illegible)
Deputy Clerk
[SEAL]

H

cc: Hon. Frank J. Habershaw, Clerk
Hon. Fran Carlton, Clerk
Hon. Linda A. Gloeckner, Judge

Mr. Donald I. Rehman
Mr. John E. DuBose, Jr.

APPENDIX D

SID J. WHITE, CLERK
SUPREME COURT OF FLORIDA
500 SOUTH DUVAL STREET
Tallahassee 32399-1927
(904) 488-0125

DONALD I. REHMAN 4/22/96 filed 4-19-96
1390 WINDY RIDGE COURT
LONGWOOD, FLORIDA 32750

DONALD I. REHMAN
VS
GARWOOD, MCKENNA
& MCKENNA,
P.A., ETC., ET AL.

CASE NO. 87,744

I have this date received the below-listed pleadings or documents:

PETITIONER'S JURISDICTIONAL BRIEF HAS BEEN TREATED AS A MOTION FOR REINSTATEMENT.

PETITIONER'S BRIEF AND APPENDIX ORIG & 5

Please make reference to the case number in all correspondence and pleadings.

Most cordially,

/s/ Signature

Clerk, Supreme Court

ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

SJW/BDM
cc: MR. JOHN E. DuBOSE, JR.

SUPREME COURT OF FLORIDA

MONDAY, JUNE 10, 1996

DONALD I. REHMAN, Appellant, v. GARWOOD, McKENNA & McKENNA, P.A., etc., et al., Appellees.	*	CASE NO. 87,744 District Court of Appeal, 5th District – No. 95-1086

Appellant's Motion for Reinstatement filed in the above cause is hereby denied.

OVERTON, SHAW, HARDING, WELLS and ANSTEAD, JJ., concur

A True Copy

TEST: (SEAL)

By /s/ T Carrsee
Deputy Clerk

Sid J. White
Clerk, Supreme Court

TC

cc: Hon. Frank J. Habershaw, Clerk
Hon. Fran Carlton, Clerk
Hon. Linda A. Gloeckner, Judge
Mr. Donald I. Rehman
Mr. John E. DuBose, Jr.

APPENDIX E

BIOGRAPHICAL SKETCH – DONALD I. REHMAN

Don Rehman is a Certified Professional Logistician (C.P.L.) with an MBA degree, a Master of Science degree in Logistics Management, and a Bachelor of Science degree in Military Science. He has over 30 years experience in the field of Logistics Management, and he has attended numerous technical courses related to his logistics career field.

As a teenager, Don Rehman commenced a military career, starting as a Private. Serving for more than 26 years, his military career was devoted almost exclusively to logistics. He received successive promotions reaching the grade of full Colonel, and worked in logistics assignments at operational levels, commodity command, major field command, and the Pentagon. He achieved Logistician certification from the cognizant Pentagon agency, in addition to earning his C.P.L. certification.

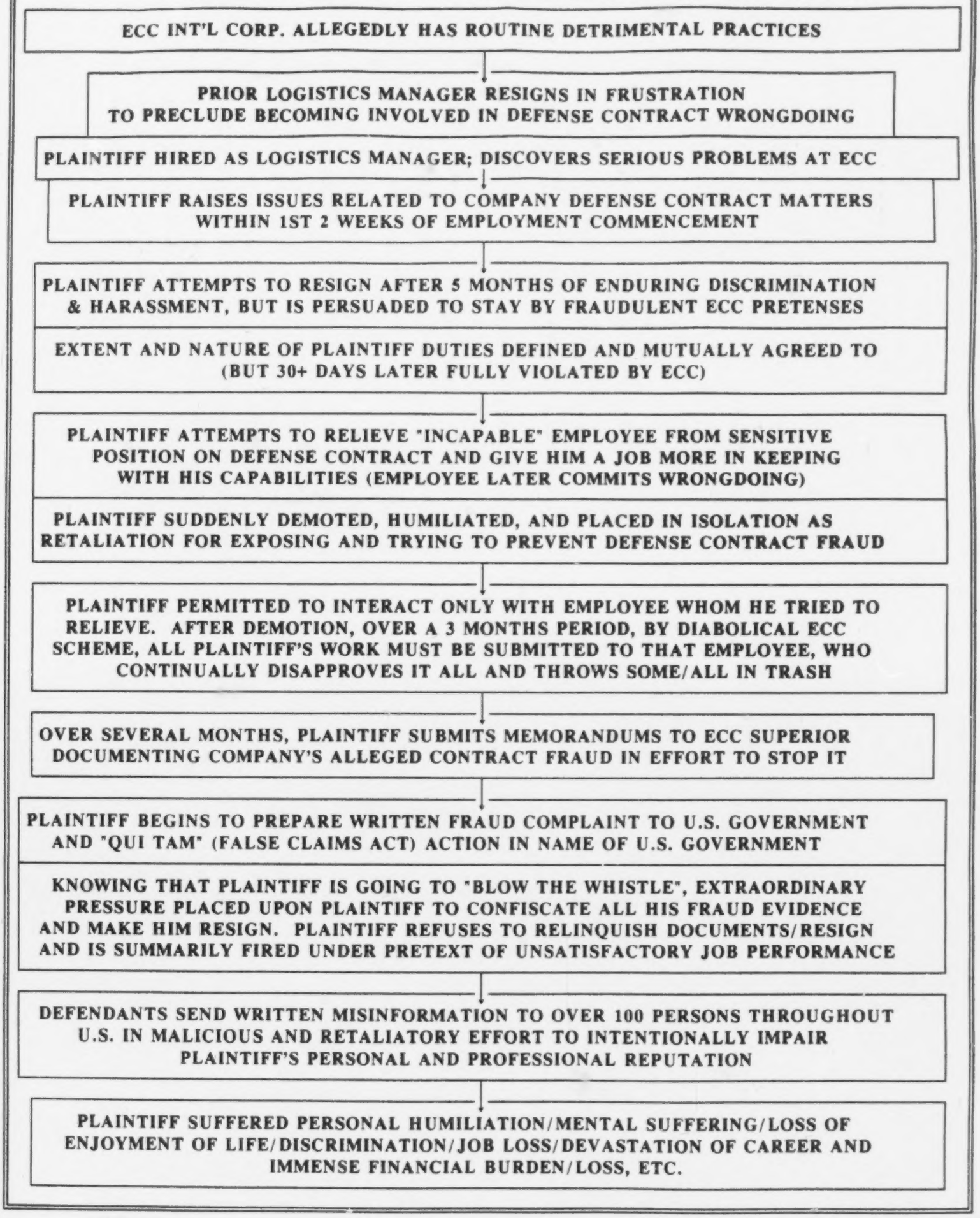
Subsequent to his military service, Don Rehman commenced a second career in industry where he worked for numerous years. He has been employed by E-Systems as Manager International Marketing & Logistics, Manager Division Profit Planning, and Manager Review & Analysis Group (Logistics). Subsequent to E-Systems employment, Don attended the University of South Florida (Tampa) on a full time basis to earn his second master's degree, an MBA. Upon graduation he joined Sanders Associates as Integrated Logistics Support (ILS) Program Manager. Later he became Manager of Logistics for Codex Corporation. In 1987 Don Rehman established Rehman Consulting Services Company, specializing in

Logistics Management, and relocated from New England to the Orlando Area. An exceptional position opportunity with a Defense Contractor in May 1989, caused him to accept employment with that Company. He subsequently was assigned as the Staff Assistant (for Logistics) to the Vice President Engineering.

Don Rehman has been married for over 42 years to his wife Marian, whom he met at his first duty station after graduating from Officer Candidate School (OCS) and becoming a second lieutenant. They have two children. Their son Doug is a graduate of the University of South Florida with a B.S. in Criminal Justice, is married, 2 children, and is employed with the Florida Department of Law Enforcement (FDLE). Their daughter Linda is a graduate of the Medical College of Georgia with a B.S. in Dental Hygiene, and is following in her mother's footsteps by having married a second lieutenant, who over the years advanced in grade, and is now a Lieutenant Colonel. She has 2 children and works full time in her medical specialty.

Don's hobbies are electronics, computer, and auto mechanics. He served over a year as Director/President of the Northridge Pointe Homeowners' Association, is now its Director/Secretary, and he recently completed several years of service as a member of the Seminole County Sheriff's Civilian Review Board.

FLOWCHART OF: CIVIL ACTION #: 90-425-CIV-ORL-22


ECC INT'L CORP. ALLEGEDLY HAS ROUTINE DETRIMENTAL PRACTICES
PRIOR LOGISTICS MANAGER RESIGNS IN FRUSTRATION TO PRECLUDE BECOMING INVOLVED IN DEFENSE CONTRACT WRONGDOING
PLAINTIFF HIRED AS LOGISTICS MANAGER; DISCOVERS SERIOUS PROBLEMS AT ECC
PLAINTIFF RAISES ISSUES RELATED TO COMPANY DEFENSE CONTRACT MATTERS WITHIN 1ST 2 WEEKS OF EMPLOYMENT COMMENCEMENT
PLAINTIFF ATTEMPTS TO RESIGN AFTER 5 MONTHS OF ENDURING DISCRIMINATION & HARASSMENT, BUT IS PERSUADED TO STAY BY FRAUDULENT ECC PRETENSES
EXTENT AND NATURE OF PLAINTIFF DUTIES DEFINED AND MUTUALLY AGREED TO (BUT 30+ DAYS LATER FULLY VIOLATED BY ECC)
PLAINTIFF ATTEMPTS TO RELIEVE "INCAPABLE" EMPLOYEE FROM SENSITIVE POSITION ON DEFENSE CONTRACT AND GIVE HIM A JOB MORE IN KEEPING WITH HIS CAPABILITIES (EMPLOYEE LATER COMMITS WRONGDOING)
PLAINTIFF SUDDENLY DEMOTED, HUMILIATED, AND PLACED IN ISOLATION AS RETALIATION FOR EXPOSING AND TRYING TO PREVENT DEFENSE CONTRACT FRAUD
PLAINTIFF PERMITTED TO INTERACT ONLY WITH EMPLOYEE WHOM HE TRIED TO RELIEVE. AFTER DEMOTION, OVER A 3 MONTHS PERIOD, BY DIABOLICAL ECC SCHEME, ALL PLAINTIFF'S WORK MUST BE SUBMITTED TO THAT EMPLOYEE, WHO CONTINUALLY DISAPPROVES IT ALL AND THROWS SOME/ALL IN TRASH
OVER SEVERAL MONTHS, PLAINTIFF SUBMITS MEMORANDUMS TO ECC SUPERIOR DOCUMENTING COMPANY'S ALLEGED CONTRACT FRAUD IN EFFORT TO STOP IT
PLAINTIFF BEGINS TO PREPARE WRITTEN FRAUD COMPLAINT TO U.S. GOVERNMENT AND "QUI TAM" (FALSE CLAIMS ACT) ACTION IN NAME OF U.S. GOVERNMENT
KNOWING THAT PLAINTIFF IS GOING TO "BLOW THE WHISTLE", EXTRAORDINARY PRESSURE PLACED UPON PLAINTIFF TO CONFISCATE ALL HIS FRAUD EVIDENCE AND MAKE HIM RESIGN. PLAINTIFF REFUSES TO RELINQUISH DOCUMENTS/RESIGN AND IS SUMMARILY FIRED UNDER PRETEXT OF UNSATISFACTORY JOB PERFORMANCE
DEFENDANTS SEND WRITTEN MISINFORMATION TO OVER 100 PERSONS THROUGHOUT U.S. IN MALICIOUS AND RETALIATORY EFFORT TO INTENTIONALLY IMPAIR PLAINTIFF'S PERSONAL AND PROFESSIONAL REPUTATION
PLAINTIFF SUFFERED PERSONAL HUMILIATION/MENTAL SUFFERING/LOSS OF ENJOYMENT OF LIFE/DISCRIMINATION/JOB LOSS/DEVASTATION OF CAREER AND IMMENSE FINANCIAL BURDEN/LOSS, ETC.

APPENDIX G

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

DONALD I. REHMAN,

Plaintiff,

-vs-

ECC INTERNATIONAL CORP.,

Defendant.

Case No.
90-425-Civ-Orl-22

REPORT AND RECOMMENDATION

(Filed Jun. 5, 1996)

TO THE UNITED STATES DISTRICT COURT

Defendant ECC International Corporation's (herein "ECC") motion for summary judgment (Doc. No. 607) has been referred to the undersigned United States Magistrate Judge for preparation of a Report and Recommendation as to appropriate disposition.

A party is entitled to judgment as a matter of law when the party can show that there is no genuine issue as to any material fact. Fed. R. Civ. Pro. 56(c). The substantive law applicable to the case determines which facts are material. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed. 2d 202 (1986). Summary judgment is mandated "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof." *Celotex Corp. v. Catrett*, 477 U.S. 317,

322 (1986). As the Plaintiff bears the burden of proving his claim, the Defendant is not required to negate it, but may support its Rule 56 motion by "showing – that is, pointing out to the district court – that there is an absence of evidence to support the non-moving party's case." *Celotex*, 477 U.S. at 325; *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112 (11th Cir. 1993). In undertaking this analysis, it is appropriate to construe the *pro se* complaint more liberally than the Court would the complaint of a represented party. *Harris v. Ostrout*, 65 F.3d 912 (11th Cir. 1995).

In its motion, ECC reiterates its earlier arguments pertaining to the two remaining claims in the case, a claim for two weeks of severance pay and a claim pursuant to 31 U.S.C. § 3730(h). *See Report and Recommendation dated March 4, 1993 (Doc. No. 497); and this Court's adoption of same (Doc. No. 532).* Although additional case law has developed since the Court denied ECC's previous motion for summary judgment on the False Claims action, the new case law does not change the facts particular to this case. Because there remain genuine issues of material fact with respect to whether Plaintiff engaged in conduct protected by § 3730(h), whether ECC was aware of such conduct and the significance of the conduct in ECC's decision to terminate Plaintiff, summary judgment is just as inappropriate now as it was three years ago. *See Field v. F & B Manufacturing, Co.*, 1996 WL 238917 (N.D. Ill. May 6, 1996) (summary judgment is inappropriate when a reasonable jury could conclude that claimant had reasonable cause for suspicion and inquiry into company's potentially fraudulent conduct, even if no actual fraud existed.)

With respect to the severance pay claim, as this Court stated previously entitlement to and the amount of severance pay cannot ordinarily be determined summarily.[1] The conflicting testimony and authorities compel denial of summary judgment on this claim.

Therefore, the undersigned respectfully recommends that ECC's motion be **DENIED** and the case remain on the trial calendar.

Failure to file written objections to the proposed findings and recommendations contained in this report within ten (10) days from the date of its filing shall bar an aggrieved party from attacking the factual findings on appeal.

Respectfully recommended in Orlando, Florida on June 5, 1996.

/s/ David A. Baker
DAVID A. BAKER
UNITED STATES
MAGISTRATE JUDGE

Copies furnished to:

Donald I. Rehman
Allen J. McKenna
Theodore R. Baumgardner

---

[1] Interestingly, in defending against Plaintiff's motion for summary judgment on this claim three years ago, ECC argued that, at the very least, factual issues exist as to Plaintiff's entitlement to be paid beyond the actual period of his employment. The Court agrees.

APPENDIX H

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

DONALD I. REHMAN,

Plaintiff

-vs- CASE NO. 90-425-CIV-ORL-22

ECC INTERNATIONAL CORP.,,

Defendant

_____/

ORDER

This cause comes before the Court on Defendant ECC International Corporation's (herein "ECC") motion for summary judgment (Dkt. 607). The United States Magistrate Judge has submitted a report recommending that the Motion be denied. No opposition to the report has been timely filed.

After an independent *de novo* review of the entire record in this matter, the Court agrees entirely with the findings of fact and conclusions of law in the Report and Recommendation (Dkt. 635).

Based on the foregoing, it is ordered as follows

1. The Report and Recommendation filed June 5, 1996 (Dkt. 635), is ADOPTED and CONFIRMED and made part of this Order.

2. The Motion for summary judgment (Dkt. 607) is denied.

DONE AND ORDERED in Chambers, Orlando, Florida, this 27th day of June, 1996.

/s/ Anne C. Conway
ANNE C. CONWAY
United States
District Judge

Copies to: Counsel of Record

APPENDIX I

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

DONALD I. REHMAN,

Plaintiff

-vs- CASE NO. 90-425-CIV-ORL-22

ECC INTERNATIONAL CORPORATION,

Defendant

_____/

ORDER

(Filed Jan. 4, 1996)

Plaintiff's **Renewed Motion to Set Cause for Trial (Dkt. 622)**, filed December 19, 1995, is GRANTED. This jury trial is scheduled for the trial term commencing **January 2, 1997.**

DONE AND ORDERED in Chambers in Orlando, Florida, this 4th day of January , 1996.

/s/ Anne C. Conway
ANNE C. CONWAY
United States
District Judge

Copies to: Donald I. Rehman, *pro se*
Counsel of Record

APPENDIX J

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN
AND FOR ORANGE COUNTY, FLORIDA

CASE NO.: CI 94-3776

DONALD I. REHMAN,

Plaintiff,

vs.

GARWOOD, McKENNA &
McKENNA, P.A., ALLEN J.
McKENNA, THOMAS C.
GARWOOD, JR, and
THEODORE R.
BAUMGARDNER,

Defendants.

_____/

ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

(Filed Nov. 3, 1994)

THIS CAUSE having come before the Court on October 31, 1994 on Defendants' Motion for Summary Judgment and the Court, having heard argument of Plaintiff and of Defendants' counsel, having reviewed the Court file, and otherwise being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED:

That Defendants' Motion for Summary Judgment is denied.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida this 2d of November, 1994.

[SEAL]

/s/ W. Rogers Turner
W. ROGERS TURNER,
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail Delivery to **JOHN E. DUBOSE, JR., ESQUIRE,** Post Office Drawer 3751, Orlando, Florida 32802 and to **DONALD I. REHMAN, PRO SE,** 1390 Windy Ridge Court, Longwood, Florida 32750 this 2 day of November, 1994.

/s/ Jan Cavone
JUDICIAL ASSISTANT

APPENDIX K

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO. CI 94-3776

DONALD I. REHMAN,

Plaintiff,

vs.

GARWOOD, McKENNA &
McKENNA, P.A., et al.,

Defendant.

_____/

ORDER SETTING JURY TRIAL

(Filed Dec. 2, 1994)

ESTIMATED LENGTH OF TRIAL PER NOTICE:3 DAYS

THIS ACTION being at issue, it is set for trial with a jury during the period beginning MAY 23, 1995 at 9:30 a.m.

Mediation shall be scheduled by Plaintiff's counsel with a mediator who is mutually agreeable to all parties. The time for mediation shall be coordinated with opposing counsel and an Order prepared and submitted to the undersigned Judge with appropriate copies and stamped envelopes for mailing. A copy of said Order is attached to Plaintiff's copy.

At least five days prior to trial, counsel shall furnish the trial Judge and serve a copy thereof on opposing counsel the following:

1. A list by name and address of the witnesses to be used at the trial.

2. A memorandum of any law upon which counsel intends to rely, with citations.

3. Copies of any ordinances and a schedule of any statutes upon which counsel intends to rely at trial.

4. Instructions, in writing, on letter size paper, double-spaced and numbered consecutively, which the Court will be requested to give during trial. The written requested instructions will make reference to Standard Jury Instructions approved by the Florida Supreme Court from which taken. In the event special instructions are requested, the citation of the Florida Supreme Court or other court's Opinion upon which it is based will be shown.

5. Forms of verdict.

6. An accurate estimate of the time required for trial.

Jurors may not be questioned by counsel concerning anticipated instructions or theories of law. Any such questions which counsel desire to have asked of prospective jurors shall be submitted to the Court in writing at least five (5) days prior to trial, with a copy served on opposing counsel, and will be asked by the Court, if deemed proper.

In accordance with the Americans With Disabilities Act, persons with disabilities needing a special accommodation to participate in this proceeding should contact Court Administration at 37 N. Orange Avenue, Suite 1130, Orlando, FL 32801, Telephone: (407) 836-2303 not

later than seven days prior to the proceeding. If hearing impaired, (TDD) 1-800-955-8771, or Voice (V) 1-800-955-8770, via Florida Relay Service.

Unless modified by the court to prevent manifest injustice, upon application timely made, this Order shall govern the further conduct of the cause.

DONE and ORDERED this 30th day of Nov., 1994.

/s/ W. Rogers Turner
W. ROGERS TURNER,
CIRCUIT JUDGE

I HEREBY CERTIFY that a true copy of the foregoing Order has been furnished by mail to: DONALD REHMAN, 1390 WINDY RIDGE CT., LONGWOOD, FLA., 32750; JOHN DUBOSE, ESQ., P. O. DRAWER 3751, ORLANDO, FLA., 32802 this 30th day of Nov., 1994.

/s/ Jan Cavone
JUDICIAL ASSISTANT
TO ABOVE JUDGE

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

DONALD I. REHAMN, Plaintiff, vs. GARWOOD, MCKENNA & MCKENNA, P.A., et al, Defendants,	Case No. CI 94-3776

ORDER DISPENSING WITH MEDIATION

THIS CAUSE having come on to be heard on Plaintiff's & Defendants' Joint Motion to Dispense With Mediation, and the Court being fully advised in the premises herein, it is hereby ORDERED AND ADJUDGED:

The Motion to Dispense With Mediation is hereby:

GRANTED

DONE AND ORDERED in Chambers, Orange County Courthouse, Orlando, Florida, this 8 day of December, 1994.

/s/ W. Rogers Turner
W. ROGERS TURNER,
CIRCUIT JUDGE

I HEREBY CERTIFY that a true copy of the foregoing Order has been furnished by mail, this 8 day of Dec., 1994 to:

Mr. Donald I. Rehman
1390 Windy Ridge Court
Longwood, FL 32750
PLAINTIFF Pro Se

John E. DuBose Jr., Esquire
WOOLFOLK, ESTES, KEOUGH & DUBOSE, P.A.
315 East Robinson Street,
Suite 555
Orlando, Florida 32802-3751
ATTORNEYS FOR DEFENDANTS

/s/ Muriel M. Johns
JUDICIAL ASSISTANT
TO ABOVE JUDGE

The Orlando Sentinel

SUNDAY, January 22, 1995

Expelled students are more likely to commit serious crimes, a state study shows, B-3

Local & state

TOM SPITZ/THE ORLANDO SENTINEL

Orange Circuit Judge Linda Gloeckner prepares to wipe her fingers after prints are taken Saturday. She was found guilty of drunken driving.

Judge convicted of drunken driving

By Debbie Salamone

OF THE SENTINEL STAFF

An Orange County judge who rammed her Volvo into the rear of a BMW two years ago was found guilty Saturday of drunken driving.

Circuit Judge Linda Gloeckner was sentenced to serve a year of probation, pay $750 in fines and drive only on business for the next six months.

Her five-day trial in Orlando ended after less than two hours of jury deliberations. Gloeckner, who shook her head after hearing the verdict, declined to comment.

Seminole County prosecutors Eilam Isaak and Jack Kaleita faced an uphill fight after Seminole County Judge Fredric Hitt prohibited them from telling jurors that Gloeckner's blood-alcohol content had been measured at 0.17 percent. Florida's legal limit at the time of Gloeckner's arrest in January 1993 was 0.10 percent.

Defense attorneys Stuart Hyman and Mark NeJame, who had questioned the reliability of the breath test, attacked the credibility of prosecution witnesses throughout the trial. Two alternate jurors — released from duty before jury deliberations — said they would have found the judge not guilty.

Hyman said appeals are likely, and he will ask for a new trial.

"Considering the outcome, it just proves there is a justice system that we have to have faith in. And it proves nobody is above the law," said John

Please see **JUDGE, B-5**

Judge must attend defensive driving school, victims program

JUDGE from B-1

Evans, a victim advocate for Mothers Against Drunk Driving who spoke for the women involved the car accident.

As part of her sentence, Gloeckner, 45, must attend defensive-driving school and a victim awareness program. Hitt withheld a formal ruling of guilt on a careless driving citation. Gloeckner interjected that she had completed a drunken driving course that also is part of her sentence. She said counselors determined she had no alcohol problem.

Gloeckner's car struck the BMW at a traffic light at Wymore and Lee roads. The BMW slammed into a vehicle in front of it. The judge refused to take all but one field sobriety test, saying blindness in one eye would have affected her ability to perform successfully.

Prosecutors, however, showed a video of Gloeckner during her arrest and called some of her answers slurred. They also had testimony from accident victims and a state trooper who said Gloeckner showed signs of intoxication, including smelling of alcohol.

Their key witness, a waitress, produced a restaurant receipt and testified that she served Gloeckner eight 2-ounce straight vodka drinks within two hours at the Maitland restaurant where the judge joined several other women for a birthday party.

But a surprise defense witness — the restaurant owner — testified that the waitress had been known to alter drink and meal tickets to pocket extra money. The receipt brought by the waitress appeared to have some inconsistencies, the defense attorneys argued.

In addition, the lawyers tried to discredit the accident victims, pointing out that a verdict against the judge would help their civil lawsuit against her. They also argued that the women at the party saw Gloeckner drink only two drinks and that she seemed fine upon leaving.

They showed a video of Gloeckner buying food in a convenience store minutes after the accident to prove she walked without staggering or swaying. Several lawyers who saw Gloeckner after the accident testified that she did not appear drunk, and her ophthalmologist testified she had trouble with depth perception that might cause her to stumble.

Gloeckner, who handles civil matters such as contract disputes, already has been reprimanded by the Florida Supreme Court.

Supreme Court, U.S.
FILED
SEP 5 1996
CLERK

No. 96-197

In The

Supreme Court of the United States

October Term, 1995

DONALD I. REHMAN,

Petitioner,

vs.

GARWOOD, McKENNA, McKENNA, AND WOLF, P.A. a Florida Corporation, ALLEN J. McKENNA, ESQUIRE, THOMAS C. GARWOOD, JR., ESQUIRE and THEODORE R. BAUMGARDNER, ESQUIRE,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Florida

RESPONDENTS' BRIEF IN OPPOSITION

JOHN E. DUBOSE, JR.
Counsel of Record
WOOLFOLK, ESTES, KEOUGH & DUBOSE, P.A.
Attorneys for Respondents
315 East Robinson Street
Suite 555
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Lutz Appellate Services, inc.
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QUESTIONS PRESENTED

I. Whether this Court lacks jurisdiction to grant certiorari since Petitioner failed to file his Petition within 90 days of the final judgment rendered by the highest court of Florida in which a decision could be had as required by 28 U.S.C. § 1257(a) and 28 U.S.C. § 2101(c).

II. Whether Florida courts correctly applied 28 U.S.C. § 1367(d), regarding tolling an applicable state statute of limitations when a federal district court dismisses a "supplemental claim" pending before it, thus providing Petitioner with his federal due process and equal protection rights.

LIST OF PARTIES

All parties to the proceeding in the court below are contained in the caption of this case. Respondent, Garwood, McKenna & McKenna, P.A., is a Florida corporation doing business as a law firm and has no parent companies or nonwholly owned subsidiaries.

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Appendix H — Supreme Court of Florida Order Dated July 19, 1996 ..... 19a

OPINIONS BELOW

The opinion of the highest state court from which a decision could be had is the Florida Fifth District Court of Appeal's opinion issued February 20, 1996. (1a).

Petitioner timely filed a Motion for Rehearing and Motion for Rehearing En Banc. The Florida Fifth District Court of Appeal denied those Motions by Order entered April 2, 1996. (3a).

STATEMENT OF JURISDICTION

It is Respondents' position that this Court lacks jurisdiction to grant Petitioner's Petition. 28 U.S.C. § 1257(a) grants authority for this Court to review by writ of certiorari final judgments or decrees rendered by the highest court of a State in which a decision could be had under enumerated conditions. 28 U.S.C. § 2101(a) provides that a petition for writ of certiorari in a civil action shall be applied for within ninety days after entry of the judgment. The Florida Fifth District Court of Appeal was the highest Florida court in which a decision could be had and rendered it final judgment when it denied Petitioner's Motions for Rehearing on April 2, 1996. Therefore, Petitioner should have filed his Petition within ninety days of April 2, 1996, on or before July 1, 1996. Petitioner's Petition was not filed until July 9, 1996.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2101(c)

> Any other appeal or any writ of certiorari intended to bring any judgment or decree in a

> civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

28 U.S.C. § 1257(a)

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set-up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

The remaining constitutional and statutory provisions involved were set forth by Petitioner.

STATEMENT OF THE CASE

Petitioner, Donald I. Rehman, was employed by ECC International Corporation, a federal defense contractor. At some point in time, prior to May 31, 1990, ECC International Corporation dismissed Mr. Rehman. On May 31, 1990 Mr.

Rehman filed a federal "whistle blower" action in the United States District Court for the Middle District of Florida asserting that ECC International Corporation had dismissed him because of his reporting of alleged contractor fraud to the United States government. ECC International Corporation retained Respondents, Allen J. McKenna and the law firm of Garwood, McKenna & McKenna, P.A., to represent it in Mr. Rehman's federal court action.

During the pendency of that federal court action, in 1990, ECC International Corporation forwarded a "Personnel Separation Notice" to the Department of Defense advising that Mr. Rehman had been dismissed for "misconduct." The "Personnel Separation Notice" was later amended to state that Mr. Rehman had been dismissed for "poor job performance."

On June 12, 1991, Mr. McKenna, in his capacity as counsel for ECC International Corporation in Mr. Rehman's "whistle blower" action, sent approximately 108 identical letters to employees and former employees of ECC International Corporation advising them of the pendency of Mr. Rehman's "whistle blower" action and informing them that they might be contacted by Mr. Rehman. Mr. Rehman asserts that these letters were defamatory and these letters, along with the "Personnel Separation Notice" form the basis of Mr. Rehman's libel action against Respondent in the court below.

On August 12, 1992, Mr. Rehman filed a motion in the "whistle blower" action seeking leave of court to add Mr. McKenna and his law firm as defendants, asserting that because of the "Personnel Separation Notice" and the 108 letters, Mr. McKenna and his law firm had libeled Mr. Rehman. On August 20, 1992, the federal district court denied Mr. Rehman's motion, holding that the case was already over-burdened by multiple parties and multiple claims and that if Mr. Rehman wished to

pursue his action against Mr. McKenna or his law firm, he would need to do so by separate action. Ultimately, the district court ruled as a matter of law that the 108 letters were not defamatory.

On August 31, 1992, Mr. Rehman filed a second federal court action, this time against Mr. McKenna and his law firm alone. Mr. Rehman attempts to assert a cause of action for libel based on the publication of the 108 letters. On September 22, 1992, Mr. McKenna and his law firm filed a motion to dismiss advising Mr. Rehman and the court that the district court lacked subject matter jurisdiction over the libel action since no federal question was involved and there was no diversity of citizenship between Mr. Rehman and Mr. McKenna and his law firm. On October 7, 1992, the district court dismissed Mr. Rehman's action for lack of subject matter jurisdiction. Mr. Rehman appealed, and on May 25, 1994, the Eleventh Circuit Court of Appeals affirmed.

On May 30, 1994, almost three years after the publication of the 108 letters and four years after the publication of the "Personnel Separation Notice", Mr. Rehman filed an action in the Circuit Court in and for Orange County, Florida against Mr. McKenna and his law firm. On September 16, 1994 Mr. Rehman filed an Amended Complaint naming as additional defendants Mr. McKenna's law partner, Thomas C. Garwood, Jr. and ECC International Corporation's in-house attorney, Theodore R. Baumgardner.

Mr. Rehman became dissatisfied with rulings made by the trial court and sought to have the trial judge disqualified. The trial judge denied Mr. Rehman's motion to disqualify and Mr. Rehman sought appellate review of that order in the context of a petition for writ of prohibition addressed to the disqualification issue. The appellate court denied the petition for writ of prohibition and the case proceeded before the trial judge

assigned to the case. Ultimately, the trial court entered summary judgments on behalf of all defendants, expressly finding that Florida's two-year statute of limitations applicable to defamation actions had expired before Mr. Rehman's action was filed in state court. (5a-7a).

Mr. Rehman appealed the trial court's summary judgments to the Florida Fifth District Court of Appeal. All of the issues which Mr. Rehman seeks to have this Court address were fully briefed and argued to the Florida Fifth District Court of Appeal. That court affirmed the trial court's entry of summary judgments on behalf of all Respondents and did so by means of a "per curiam affirmed" opinion. (1a). That opinion was entered on February 20, 1996. A timely motion for rehearing and motion for rehearing en banc were filed and on April 2, 1996, the Florida Fifth District Court of Appeal denied those motions. (3a).

Thereafter, Mr. Rehman sought review in the Florida Supreme Court. The Florida Supreme Court dismissed the appeal for lack of jurisdiction but ordered that Mr. Rehman could, by motion to reinstate, establish the jurisdiction of that court to entertain his appeal. (11a). Mr. Rehman subsequently filed a jurisdictional brief which the Florida Supreme Court treated as his motion for reinstatement. Thereafter the Florida Supreme Court denied Mr. Rehman's motion to reinstate and allowed the dismissal for lack of subject matter jurisdiction to stand. (13a). Respondents herein filed a motion for attorneys fees in the Florida Supreme Court arguing that because the Florida Supreme Court clearly lacked subject matter jurisdiction, Mr. Rehman's appeal to that court was frivolous. (15a-18a). The Florida Supreme Court granted the motion for attorneys fees. (19a). Mr. Rehman has filed a motion for rehearing directed to that order and the Florida Supreme Court has not yet ruled on the motion for rehearing.

REASONS FOR DENYING THE WRIT

I.

THIS COURT LACKS JURISDICTION TO GRANT CERTIORARI SINCE PETITIONER FAILED TO FILE HIS PETITION WITHIN NINETY DAYS OF THE FINAL JUDGMENT RENDERED BY THE HIGHEST COURT OF FLORIDA IN WHICH A DECISION COULD BE HAD AS REQUIRED BY 28 U.S.C. § 1257(a) AND 28 U.S.C. § 2101(c).

This Court's jurisdiction to entertain a petition for writ of certiorari from a final judgment or decree rendered by a state court is prescribed by statute. Specifically, 28 U.S.C. § 1257(a) provides as follows:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set-up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

The time for filing a petition for writ of certiorari from a final judgment or decree of a state court is governed by the provisions of 28 U.S.C. § 2101(c). That statute provides as follows:

> Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

Thus, when the highest court of a State in which a decision could be had has rendered its final judgment or decree, a party seeking review in this Court, must file his petition for writ of certiorari within ninety days of the entry of the State judgment or decree unless a justice of this Court has extended the time for a period not exceeding sixty days.[1] In the instant case, the highest court of Florida in which a decision could be had was the Florida Fifth District Court of Appeal. That court rendered its final judgment on April 2, 1996 when it denied Mr. Rehman's motion for rehearing and motion for en banc rehearing directed to that Court's February 20, 1996 opinion affirming the trial court's entry of summary judgment in favor of the Respondents herein. If April 2, 1996, the date on which the Florida Fifth District Court of Appeal denied Mr. Rehman's motion for rehearing is treated as the date on which the highest court of Florida in which a decision could be had rendered its final judgment, his Petition for Writ of Certiorari should have been filed in this Court on or before July 1, 1996, ninety days after the final judgment was rendered. 28 U.S.C. § 2101(c). Mr. Rehman's Petition for Writ of Certiorari was not filed until July 9, 1996.

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1. Mr. Rehman has not sought and no justice of this Court has granted an extension for the filing of the instant Petition.

This Court has held that where the time within which a Petition for Writ of Certiorari must be filed is established by Congress, the timely filing of a petition is a prerequisite to this Court's jurisdiction. *See Schacht v. United States*, 398 U.S. 58, 65, 90 S. Ct. 1555, 26 L. Ed. 2d 44 (1970) (concurring opinion of Justice Harland); *Matton Steamboat Co., Inc. v. Murphy*, 319 U.S. 412, 63 S. Ct. 1126, 87 L. Ed. 1483 (1943); *Department of Banking v. Pink*, 317 U.S. 264, 63 S. Ct. 233, 87 L. Ed. 254 (1942); *Citizen's Bank v. Opperman*, 249 U.S. 448, 39 S. Ct. 330, 63 L. Ed. 701 (1919) ("In the absence of language provided for waiver, we have without exception treated the statutory limitations as jurisdictional."). Pursuant to 28 U.S.C. § 2101(c), Congress has set the time for invoking this Court's jurisdiction in civil cases and, therefore, the statutory limitations is jurisdictional. Justice Harland, in *Schacht*, stated:

> Nor do I find it at all anomalous that this Court on occasion waives the time limitations imposed by its own Rules and yet treats time requirements imposed by statute as jurisdictional. As a matter of statutory interpretation, the Court has not presumed the right to extend time limits specified in statutes where there is no indication of a congressional purpose to authorize the Court to do so. Because we cannot "waive" congressional enactments, the statutory time limits are treated as jurisdictional.

398 U.S. at 68-69.

Thus, if the April 2, 1996 Florida Fifth District Court of Appeal order constitutes the rendition of the final judgment of the highest court of Florida in which a decision could be had, Mr. Rehman has missed the statutory and jurisdictional filing

deadline. Thus, this Court lacks jurisdiction. It is Respondents' argument that the Florida Fifth District Court of Appeal was the highest court of Florida in which a decision could be had in Mr. Rehman's action below. Mr. Rehman asserts in his Petition that the Florida Supreme Court's rejection of his attempted appeal to that court was the judgment of the highest state court in which a decision could be had. Under Mr. Rehman's argument, the time for filing his Petition for Writ of Certiorari did not begin to run until June 10, 1996, the date on which the Florida Supreme Court denied his motion for reinstatement. However, as will be shown below, the Florida Supreme Court never had jurisdiction to entertain Mr. Rehman's appeal, never accepted jurisdiction, and never passed upon the merits of Mr. Rehman's claims. Therefore, the judgment of the Florida Fifth District Court of Appeal, rendered on April 2, 1996, was the final judgment of the highest court in Florida in which a decision could be had.

Article V, Section III of the Florida Constitution sets forth the parameters of the Florida Supreme Court's subject matter jurisdiction. That constitutional provision provides that the Florida Supreme Court has jurisdiction only in those cases involving: the imposition of the death penalty; a district court of appeal's declaration that a state statute or provision of the state constitution is invalid; the validation of bonds or certificates of indebtedness; an action of a state-wide agency relating to rates or service of utilities; a decision of a district court of appeal certifying a question to be of great public importance or in direct conflict with a decision of another district court of appeal; an order or judgment of a trial court certified by a district court of appeal to be of great public importance; or question of law certified by the United States Supreme Court or a United States Court of Appeals to be determinative of a cause pending before such court; or a district court of appeal's decision that expressly declaring valid a state statute; a district court of appeal's decision expressly construing a provision of the state or federal

constitution; a district court of appeal's decision that expressly affects a class of constitutional or state officers; or a district court of appeal's decision that expressly and directly conflicts with a decision of another district court of appeal or of the Florida Supreme Court on the same question of law.

In the Florida Supreme Court, Mr. Rehman did not cite any constitutional provision or other authority which would have provided the Florida Supreme Court with jurisdiction to entertain his appeal. The clearest expression of Mr. Rehman's argument that the Florida Supreme Court had jurisdiction was contained in his jurisdictional brief when he stated:

> While probably all of the litigants represented by counsel, in their jurisdictional briefs to this Court, dwell upon their perception of why they believe the court has jurisdiction, perhaps for this pro se's case it would be helpful to this Court if the matter is approached from the "surely jurisdiction must exist at the Florida Supreme Court" aspect.

Mr. Rehman's "surely jurisdiction must exist" argument was premised on his belief that the district court of appeal and the trial court had denied him due process and otherwise deprived him of unnamed federal and state constitutional rights as well as on the asserted failure of the district court of appeal and the trial court to apply controlling precedent.

However, Mr. Rehman's assumption fails to recognize the role of the Florida Supreme Court and of the district courts of appeal in Florida's constitutional scheme. Since the amendment to Article V of the Florida Constitution in 1956, by which the district courts of appeal were created, the Florida Supreme Court

has taken the position that it was never intended that the district courts of appeal should be intermediate appellate courts or that the Florida Supreme Court should be a court of last resort in all cases as a matter of right. *See, e.g., Ansin v. Thurston*, 101 So. 2d 808, 810 (Fla. 1958). In *Ansin*, the Florida Supreme Court stated:

> The [1956 Amendment] embodied throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.

Id. The 1980 Amendment to Article V further restricted the Florida Supreme Court's jurisdiction and reaffirmed the principle that in the great majority of cases, the district courts of appeal would be the highest state courts empowered to hear a cause. *See generally Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

Mr. Rehman's attempted appeal to the Florida Supreme Court involves none of the jurisdictional requirements set forth in Article V, Section 3 of the Florida Constitution as discussed above. His case did not involve the imposition of the death penalty, the validation of bonds or certificates of indebtedness, a state-wide agency action relating to rates or service of utilities, or a certified question from this Court or a United States Court of Appeals. The only argument available to Mr. Rehman would be predicated on the opinion issued by the Florida Fifth District Court of Appeal. However, as stated above, the Florida Fifth District Court of Appeal entered an opinion containing the mere

words "per curiam affirmed". That court did not expressly pass upon a constitutional or statutory provision and, therefore, the Florida Supreme Court lacked subject matter jurisdiction to entertain any appeal from that "per curiam affirmed" opinion. On at least two other occasions, this Court has determined that the Florida Supreme Court did not have jurisdiction to entertain an appeal based upon Florida's constitutional scheme as outlined above. *See Nash v. Florida Industrial Commission*, 389 U.S. 235, 88 S. Ct. 362, 19 L. Ed. 2d 438 (1967); *Williams v. Florida*, 399 U.S. 78, 90 S. Ct. 1893, 26 L. Ed. 2d 446 (1970).

Further, in *The Florida Star v. B.J.F.*, 488 U.S. 887, 108 S. Ct. 499, 98 L. Ed. 2d 498 (1987), this Court certified the following question of Florida law to the Florida Supreme Court:

> Whether the Florida Supreme Court had jurisdiction, pursuant to Article V, § 3(b)(3) of the Florida Constitution or otherwise, to hear Appellant's appeal in this cause from the Florida First District Court of Appeal?

In *The Florida Star v. B.J.F.*, 530 So. 2d 286 (Fla. 1988), the Florida Supreme Court answered that question in the affirmative "as delimited by this opinion". *Id.* at 287. In answering the certified question in the affirmative, the Florida Supreme Court stated:

> Instead, we limit our answer to the context in which the question was posed. For that sole purpose, we answer the question in the affirmative. This Court in the broadest sense has subject-matter jurisdiction under article V, section 3(b)(3) of the Florida Constitution, over any decision of a district court that expressly addresses a question of law within

> the four corners of the opinion itself. That is, the opinion must contain a statement or citation effectively establishing a point of law upon which the decision rests. The opinion *B.J.F.* unquestionably met this requirement.
>
> We premise our holding on our conclusion that article V, section 3(b)(3) creates and defines two separate concepts. The first is a general grant of discretionary subject-matter jurisdiction, and the second is a constitutional command as to how the discretion itself may be exercised. In effect, the second is a limiting principle dictated to this Court by the people of Florida. While our subject-matter jurisdiction in conflict cases is necessarily very broad, our discretion to exercise it is more narrowly circumscribed by what the people have commanded;
>
> * * *
>
> Thus it is not necessary that conflict actually exists for this Court to possess subject-matter jurisdiction, only that there be some statement or citation in the opinion that hypothetically could create conflict if there were another opinion reaching a contrary result. This is the only reasonable interpretation of this constitutional provision.

Id. at 288.

In reaching this answer to the certified question, the Florida Supreme Court specifically addressed the jurisdictional issue which is presently before this Court. In footnote 3 of the Florida Supreme Court's opinion, the court stated:

> This court does not, however, have subject-matter jurisdiction over a district court opinion that fails to expressly address a question of law, such as opinions issued without opinion or citation. Thus, a district court decision rendered without opinion or citation constitutes a decision from the highest state court empowered to hear the cause, and the appeal may be taken directly to the United States Supreme Court.

Id. See also Jollie v. State, 405 So. 2d 418, 420 (Fla. 1981).

Because the "per curiam affirmed" judgment of the Florida Fifth District Court of Appeal in Mr. Rehman's action does not and cannot expressly address a question of law (it contains no opinions or citations), the Florida Supreme Court was without jurisdiction to hear the case and the Florida Fifth District Court of Appeal was the highest court of Florida in which a decision could be had in Mr. Rehman's action. For this reason, the Florida Supreme Court dismissed Mr. Rehman's appeal and awarded attorneys fees for the filing of a frivolous action. Because the Florida Fifth District Court of Appeal was the highest court of Florida in which a decision could be had in Mr. Rehman's case and because that court's final judgment was rendered on April 2, 1996, Mr. Rehman's Petition for Writ of Certiorari should have been filed in this Court no later than July 1, 1996. In fact, Mr. Rehman filed his Petition on July 9, 1996, eight days after the statutory time period provided for in 28 U.S.C. § 2101(c). This Court has long held that the congressionally mandated time

limitations applicable to civil actions is jurisdictional. Therefore, this Court lacks jurisdiction over the instant action.

II.

FLORIDA COURTS CORRECTLY APPLIED 28 U.S.C. § 1367(d), REGARDING TOLLING AN APPLICABLE STATE STATUTE OF LIMITATIONS WHEN A FEDERAL DISTRICT COURT DISMISSES A "SUPPLEMENTAL CLAIM" PENDING BEFORE IT, THUS PROVIDING PETITIONER WITH HIS FEDERAL DUE PROCESS AND EQUAL PROTECTION RIGHTS.

In his Petition for Writ of Certiorari, Mr. Rehman lists nine questions presented, all seemingly asserting that his federal constitutional rights to due process and equal protection were deprived by Florida courts. Mr. Rehman asserts that due process or equal protection under the United States Constitution requires the following:

> A. That the Florida Constitution, which makes the district courts of appeal the courts of last resort in most cases, must provide a right of appeal in all cases to the Florida Supreme Court;
>
> B. That a state court cannot disagree with a *pro se* litigant regarding whether a cited precedent is controlling under the facts of a particular case;
>
> C. That a state cannot promulgate its own court rules to provide that a successor judge has the authority to vacate non-final orders of a predecessor judge, even when the right to appeal remains available;
>
> D. That a state supreme court or other governing entity may not determine that a trial judge who has one

conviction for driving under the influence of alcohol may nonetheless be competent to serve as a judge, even in a case involving a pro se litigant.

Mr. Rehman does not specifically address how the due process clause or the equal protection clause of the United States Constitution impacts on these mostly procedural events. Mr. Rehman cites no precedent from this Court or any other authorities which might even suggest that these mostly procedural events are constitutionally suspect. As a matter of fact, most courts throughout this county have traditionally used all or the vast majority of these procedures and Respondents are unaware of any authorities whatsoever which would condemn them. For these reasons, Respondents are confident that no constitutional rights have been violated in this regard in Mr. Rehman's Florida action and will not comment on them any further.

The only issue raised by Mr. Rehman which merits any discussion at all concerns his assertion that the Florida courts failed to apply a federal statute, 28 U.S.C. § 1367(d), regarding the tolling of a state statute of limitations. Even if the Florida courts misapplied that statute, which they did not do, it is doubtful whether this court should grant certiorari for such an asserted misapplication of a properly stated rule of law. *See* Rule 10, *Rules of the Supreme Court*.

In fact, Florida courts were correct in their application of 28 U.S.C. § 1367(d) since Mr. Rehman's 1990 action in the federal district court against his former employer was filed prior to the effective date of the statute and his subsequent federal district court action filed against some of the instant Respondents was never a "supplemental action" as that term is used in the statute.

Mr. Rehman's libel action was filed in the Florida trial court on May 30, 1994 against Respondents, Allen J. McKenna,

Esquire and Garwood, McKenna & McKenna, P.A. only. On September 16, 1994 Mr. Rehman filed an amended complaint in the Florida trial court naming Respondents, Theodore R. Baumgardner, Esquire and Thomas C. Garwood, Jr., Esquire as additional defendants. In his complaint and amended complaint, Mr. Rehman has alleged that two documents allegedly published by Respondents libeled him. The first alleged libelous publication occurred in 1990 when a "Personnel Separation Notice" was sent by Mr. Rehman's former employer, ECC International Corporation, advising the Department of Defense that Mr. Rehman had been discharged for misconduct. Ultimately, that "Personnel Separation Notice" was amended to simply state that Mr. Rehman had been discharged for poor job performance. The second alleged libelous publication occurred on June 12, 1991 when 108 letters were sent to employees and former employees of Mr. Rehman's former employer advising them of the pendency of Mr. Rehman's lawsuit against the former employer and advising that they might be contacted by Mr. Rehman.

The statute of limitations applicable to an action for defamation, whether libel or slander, is two years from the date of publication. *Fla. Stat.* § 95.11(4)(g). Specifically, the state statute provides as follows:

> Actions other than for recovery of real property shall be commenced as follows:
>
> * * *
>
> (4) within two years:
>
> * * *
>
> (g) an action for libel or slander.

Id. Because Mr. Rehman filed his action almost three years after the date of the last allegedly libelous publication, Mr. Rehman's action was clearly barred by the statute of limitations as a matter of law.

Mr. Rehman has attempted to avoid the application of the two year statute of limitations by arguing that his federal court lawsuits tolled the statute of limitations until such time as the federal courts had resolved those lawsuits. Specifically, Mr. Rehman relies on a tolling provision found at 28 U.S.C. § 1367(d) which provides that the statute of limitations is tolled on supplemental jurisdiction claims until 30 days after a federal court dismisses such supplemental claims. Section 1367 states as follows:

> Except as provided in Subsections (b) and (c) or as expressly provided otherwise by federal statute, in any civil action in which the district courts have original jurisdiction, the district court shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties. [28 U.S.C. § 1367(a)].
>
> The period of limitations for any claim asserted under Subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under

> Subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless state law provides for a longer tolling period. [28 U.S.C. § 1367(d)].

This statute is part of the Judicial Improvements Act of 1990 and, among other things, codifies under the term "supplemental jurisdiction" the case law doctrine of "pendent jurisdiction". Pendent jurisdiction vests in a United States district court the discretion to consider a non-federal claim for which an independent jurisdictional ground does not exist if such non-federal claim is "supplemental" to a federal claim between the same parties properly before the court. This discretion allows the district court's jurisdiction to be invoked when the relationship between the federal claim and state claim permits a conclusion that the entire action before the court comprises but one constitutional case. Black's Law Dictionary 1021 (5th ed. 1979). Pendent jurisdiction is, therefore, a concept whereby a federal district court, in the exercise of jurisdiction over a federal claim properly before it, may also, in its discretion, proceed to extend jurisdiction over a related state law claim where both claims arise from a common nucleus of operative facts. *Id.*

The best interpretation of the doctrine of pendent jurisdiction can be found in *United Mine Workers v. Gibbs*, 383 U.S. 715, 86 S. Ct. 1130, 16 L. Ed. 2d 218 (1966). In *Gibbs*, this Court recognized that in our federal system a plaintiff who has a federal claim against a defendant will often find that the same wrongful conduct that grounded the federal claim has given rise to a claim under state law as well. The Court emphasized that there may be different claims, grounds, and counts, but that they are all in support of what is essentially *a single claim*. *Id.*, 86 S. Ct. at 1137.

While the Judicial Improvements Act of 1990 increases a

federal court's opportunity to impose federal jurisdiction (or at least gives congressional consent to the court-made rule of pendent jurisdiction), inherent in the definition of "supplemental" jurisdiction is the concept that the federal court has original jurisdiction over a federal claim and that judicial economy may require that a claimant's state law claims be decided in the same action as the claim which gives rise to the federal court's original jurisdiction. It is evident, therefore, that in the absence of ***original*** jurisdiction, there can be no "supplemental jurisdiction" to be exercised by the federal district court.

Mr. Rehman asserts that a "whistle blower" action was instituted against his former employer on May 31, 1990. During the course of that litigation, Respondents sent the allegedly libelous letters to employees and former employees of Mr. Rehman's former employer. Mr. Rehman, believing that those letters had libeled him, filed a motion to add some of the instant Respondents as defendants in that action. On August 20, 1992, the district court denied Mr. Rehman's motion stating that if an action were to be pursued against Mr. McKenna and his law firm, it would have to be pursued by a separate action.

On August 31, 1992, Mr. Rehman filed yet another federal court action against some of the instant Respondents, alleging that in 1990 and 1991, Mr. McKenna and his law firm had libeled Mr. Rehman. Almost immediately upon being served with a summons and a copy of the complaint, those Respondents filed a motion to dismiss dated September 22, 1992, advising Mr. Rehman that the federal district court did not have ***any*** jurisdiction since no federal question was presented and there was no diversity of citizenship. Despite being told that the federal district court had no jurisdiction over his action, Mr. Rehman continued to assert that the federal district court did, in fact, have jurisdiction. Mr. Rehman made this argument up to the

time the federal district court dismissed his action on October 7, 1992 and until the Eleventh Circuit Court of Appeals affirmed the district court's finding of no jurisdiction on May 25, 1994. At no time during the pendency of that action did Mr. Rehman attempt to file a state court action for libel against any of the instant Respondents.

Throughout the proceedings below, Mr. Rehman consistently argued that as long as his independent 1992 federal action against Mr. McKenna and the law firm was pending in the federal court system, whether in the district court or the circuit court of appeals, the statute of limitations for libel was tolled pursuant to 28 U.S.C. § 1367(d). These Respondents have consistently argued that § 1367(d) did not toll the statute of limitations while the federal court action against some of the instant Respondents was pending because the federal court never exercised "supplemental jurisdiction" over any claim brought by Mr. Rehman since the federal district court had no jurisdiction whatsoever, whether original or supplemental. If Mr. Rehman would have had a federal claim in addition to his claim for libel and if the federal district court had chosen to exercise its supplemental jurisdiction over the state libel claim, Mr. Rehman would be correct that § 1367(d) would have tolled the statute of limitations relative to the state libel claim. However, Mr. Rehman did not have a federal claim, the federal district court did not have original jurisdiction, and, most importantly, the federal district court did not exercise "supplemental jurisdiction" over Mr. Rehman's state libel claim. Therefore, at least insofar as Mr. Rehman's independent 1992 federal court action against Mr. McKenna and his law firm is concerned, § 1367(d) is totally inapplicable and the statute of limitations was not tolled during the pendency of that independent 1992 federal court action.

A. 28 U.S.C. § 1367 and Mr. Rehman's 1990 Federal Action

Alternatively, Mr. Rehman argued that the prior federal court action against his former employer provides the basis for the tolling of the two year statute of limitations applicable to this action. Mr. Rehman appears to be arguing that because he filed a motion for leave to amend his complaint to add Mr. McKenna and his law firm as defendants in the 1990 federal district court action against Mr. Rehman's former employer, the statute of limitations has been tolled pursuant to § 1367(d), even though the motion was denied and a separate federal court action filed.

As will be more fully discussed below, 28 U.S.C. § 1367(d) does not even apply to Mr. Rehman's 1990 federal court action against his former employer. Even assuming that § 1367(d) did apply, Mr. Rehman can have no reasonable expectation that a federal court of appeals would overturn the federal district court's decision not to exercise supplemental jurisdiction under the circumstances as they existed at the time Mr. Rehman filed his motion to add Mr. McKenna and his law firm as additional defendants. In fact, the Eleventh Circuit Court of Appeals affirmed the district court in that regard.

As stated above, the decision to exercise supplemental jurisdiction is vested within the sound discretion of the federal district court. There is even some doubt as to whether a court of appeals has the authority to review a district court decision denying exercise of supplemental jurisdiction.[2] Even assuming that the court of appeals could reverse a district court's decision not to exercise supplemental jurisdiction under a finding of

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2. *See U.S. Anchor Mfg., Inc. v. Rule Industries, Inc.*, 7 F.3d 986, 1005 (11th Cir. 1993). In *U.S. Anchor*, the Eleventh Circuit stated at footnote 31 that it did not need to decide whether § 1367 would allow the court of appeals to decide the propriety of exercising supplemental jurisdiction or whether such discretion is vested in the district court alone. *Id.*

abuse of discretion or clear abuse of discretion, there can be no reasonable expectation that the Eleventh Circuit Court of Appeals would find that the district court in Mr. Rehman's action against his former employer abused its discretion. The district court ruled that the action had been pending for a sufficient period of time that it was already too complex to be burdened by the addition of more defendants. Further, if the district court had allowed the amendment, Mr. McKenna and his law firm, as named defendants in the lawsuit, most likely would have been prohibited from continuing their representation of Mr. Rehman's former employer and the litigation would have been hopelessly stalled by the addition of two new sets of defense attorneys, new defense attorneys for Mr. Rehman's former employers and new defense attorneys to represent Mr. McKenna and his law firm. Under such circumstances, it would be almost impossible to imagine a situation where the Eleventh Circuit Court of Appeals would find that the district court had abused its discretion in denying Mr. Rehman's motion. Further, the Eleventh Circuit Court of Appeals has not even addressed the issue as to whether it has the authority to review that decision.

This Court need not concern itself with either the issue of whether the federal district court's decision to deny exercise of its supplemental jurisdiction or the issue of whether 28 U.S.C. §1367(d) would operate to toll the statute of limitations applicable to Mr. Rehman's libel action. Mr. Rehman's action against his former employer was filed on May 31, 1990. 28 U.S.C. § 1367 is part of the Judicial Improvements Act of 1990 which, according to the terms of that Act, applies to actions commenced "on or after the date of the enactment of this Act". Pub. L. 101-650. In *Yanez v. United States*, 989 F.2d 323, 327 (9th Cir. 1993), the Ninth Circuit stated the following at footnote 3:

> Although Congress has now explicitly

> authorized pendent party jurisdiction ("supplemental jurisdiction"), 28 U.S.C.A. § 1367 (West Supp. 1992), the Section is not retroactive. Section 1367 applies to civil actions commenced on or after Dec. 1, 1990. The Judicial Improvements Act of 1990, Pub. L. No. 101-650, § 310(c).

Further, in *United States Anchor Mfg. v. Rule Industries, Inc.*, 7 F.3d 986, 1005 (11th Cir. 1993), the Eleventh Circuit held as follows:

> Under 28 U.S.C. § 1367(d), the statute of limitations would be tolled while the claims were pending until 30 days after an order of dismissal, thus allowing the plaintiff time for filing a new action in state court without a lapse of its rights. But the present case was commenced before the statute's effective date on December 1, 1990, and § 1367 is not retroactive.

Similarly, it is undisputed that Mr. Rehman's federal court action against his former employer was filed on May 31, 1990, prior to the effective date of the Judicial Improvements Act of 1990 and, therefore, prior to the effective date of 28 U.S.C. § 1367(d). Because this statute is not retroactive and does not apply to actions which were commenced before the statute's effective date (December 1, 1990), *United States Anchor*, Mr. Rehman has no argument under § 1367(d) that anything done in his 1990 federal court action against his former employer tolled the statute of limitations. That statute simply does not apply to Mr. Rehman's 1990 federal court action against his former employer and, therefore, Mr. Rehman's state court action for libel filed in May of 1994 was barred by the statute of limitations.

Mr. Rehman filed two federal court actions which he has contended could have tolled the statute of limitations applicable to his libel action against at least some of the instant Respondents. The first of those federal court actions, Mr. Rehman's 1990 action against his former employer, did not toll the running of the statute of limitations since, as outlined above, §1367(d) is not retroactive and does not apply to that action. The second federal action, the 1992 independent action, contained no basis for the federal court to take any jurisdiction, original or supplemental, and, therefore, the second federal action likewise does not provide a tolling of the statute of limitations.

B. 28 U.S.C. § 1367 and the Appellate Process

Additionally, even assuming that § 1367(d) applied to either of Mr. Rehman's federal court actions, it would appear that the statute of limitations applicable to his libel action against these Appellees expired prior to the time he filed his complaint in the state trial court. Section 1367(d) specifically provides that "the period of limitations for any claim asserted under Subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after ***the dismissal of the claim under Subsection (a),*** shall be tolled while the claim is pending and for a period of ***30 days after it is dismissed*** unless State law provides for a longer tolling period." The unambiguous language of the statute, therefore, would require a party seeking to take advantage of the limitations tolling provision of the statute to file his state court action within 30 days of the ***order of dismissal*** and not from any ultimate resolution of the order of dismissal on appeal. At least one commentator has specifically made this observation:

> The dismissal moment should be taken to be the moment of dismissal in the district court. Even if an appeal is taken to a court of appeals

> from the district court dismissal, the party whose claim has been dismissed under § 1367 does best to commence the state action within the prescribed time measured from the district court dismissal, and not from some later appellate affirmance of it. Perhaps, after commencing the state court action in such a situation, the plaintiff can ask the state court to stay the action — now timely commenced and pending — while the federal appeal proceeds.

28 U.S.C.A. § 1367 pp. 828-37 (West 1993).

To Respondents' knowledge, there is no case law which would support an interpretation of § 1367(d) different than the plain wording of the statute. The statute requires a party seeking to take advantage of the limitations tolling provision to file his state court action within 30 days of the order of dismissal in the district court. Therefore, Mr. Rehman's arguments relating to § 1367(d) are simply wrong since he did not file his state court action within 30 days of the denial of his motion for leave to amend in the 1990 action against his former employer and did not file his action within 30 days after the order of dismissal in the subsequent independent 1992 federal action. Simply stated, even assuming that § 1367 applied in this case, Mr. Rehman waited a significantly longer period of time than the 30 days provided in the statute to file his state court action and the state court action was barred by Florida's two-year statute of limitations.

C. Naming Additional Defendants

As stated above, Mr. Rehman filed an amended complaint on September 16, 1994 naming as additional defendants,

Theodore R. Baumgardner, Esquire and Thomas C. Garwood, Jr., Esquire, Mr. Rehman never named and never attempted to name Mr. Baumgardner or Mr. Garwood in either of his federal court actions. Without the tolling effect of § 1367(d) there would be no argument that Mr. Rehman's libel action against Mr. Baumgardner and Mr. Garwood would be barred by the statute of limitations just as it would be against Mr. McKenna and his law firm. Again, even assuming that § 1367(d) applied in this case, there can be no argument advanced that the statute of limitations was tolled as to Mr. Baumgardner and Mr. Garwood since, as stated above, Mr. Rehman never named either of them in either of his federal court actions.

Clearly, the Florida courts were correct in their determination that § 1367(d) did not apply to Mr. Rehman's state court action and that the applicable statute of limitations had expired. Mr. Rehman has not been deprived of any of his federal constitutional or statutory rights.

CONCLUSION

Because this Court lacks jurisdiction due to Petitioner's untimely filing of his Petition for Writ of Certiorari and because none of Petitioner's federal constitutional or statutory rights have been denied by Florida courts, this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

JOHN E. DUBOSE, JR.
Counsel of Record
WOOLFOLK, ESTES, KEOUGH
& DUBOSE, P.A.
Attorneys for Respondents
Landmark Center One
315 East Robinson Street
Suite 555
P.O. Drawer 3751
Orlando, Florida 32802-3751
(407) 849-6580

APPENDIX A — FLORIDA FIFTH DISTRICT COURT OF APPEAL DECISION FILED FEBRUARY 20, 1996

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 1996

CASE NO. 95-1086

DONALD I. REHMAN

Appellant.

v.

GARWOOD, McKENNA & McKENNA, P.A., etc., et al.,

Appellees.

Decision filed February 20, 1996

Appeal from the Circuit Court
for Orange County.
Linda A. Gloeckner, Judge.

Donald I. Rehrnan, Longwood.
pro se.

John E. Dubose, Jr., of Woolfolk, Estes, Keough
& Dubose, P.A., Orlando, for Appellees.

PER CURIAM.

Appendix A

AFFIRMED.

PETERSON. C.J.. DAUKSCH and COBB. JJ. concur.

APPENDIX B — FLORIDA FIFTH DISTRICT COURT OF APPEAL ORDER ENTERED APRIL 2, 1996

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT

CASE NO. 95-1086

DONALD I. REHMAN

Appellant,

v.

GARWOOD, McKENNA & McKENNA, P.A., etc., et al.,

Appellee.

DATE: April 2, 1996

BY ORDER OF THE COURT:

ORDERED that Appellant's MOTION FOR REHEARING, and Appellant's MOTION FOR EN BANC REHEARING, filed March 1, 1996, are denied.

I hearby certify that the foregoing is
(a true copy of) the original court order.

s/ Frank J. Habershaw, Clerk
FRANK J. HABERSHAW, CLERK

Appendix B

by: _____
Deputy Clerk

(COURT SEAL)

cc: Donald I. Rehman
John E. Dubose, Jr., Esq.

APPENDIX C — ORDER OF CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT DATED APRIL 20, 1995

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO. CI 94-3776

DONALD I. REHMAN

Plaintiff,

vs.

GARWOOD, McKENNA & McKENNA, P.A. ALLEN J. McKENNA, THOMAS C. GARWOOD, JR, and THEODORE R. BAUMGARDNER,

Defendants.

ORDER GRANTING DEFENDANTS ALLEN J. MKENNA AND GARWOOD. MCKENNA & MCKENNA. P.A.'S MOTION FOR SUMMARY JUDGMENT AND ENTERING SUMMARY FINAL JUDGMENT

THIS CAUSE having come before the Court on March 16, 1995 on the Motion for Summary Judgment of Defendants, ALLEN J. McKENNA and GARWOOD, McKENNA & McKENNA, P.A., and the Court, having heard argument of Plaintiff and of Defendants' counsel, having reviewed the Court file, and otherwise being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED:

Appendix C

1. The Court finds that Plaintiff's action is barred by the applicable statute of limitations, *Florida Statutes* Section 95.11(4)(g). Plaintiff's 1992 action filed in the United States District Court for the Middle District of Florida was not a "supplemental action" as that term is defined in 28 U.S.C. Section 1367 and, consequently, the tolling provision of said statute does not apply to the instant action. Because the above-captioned case was filed in this Court after the expiration of the statute of limitations, Plaintiff's action against these Defendants is time barred.

2. The Court also finds that the Order of the United States District Court for the Middle District of Florida entered on May 17, 1993 in Plaintiff's action filed in that Court, Case Number 90-425-CIV-ORL-22, collaterally estops Plaintiff from relitigating the issue of the alleged defamatory nature of the 108 letters referred to in Plaintiff's Amended Complaint. The District Court determined they were not and Plaintiff is estopped from relitigating that issue in this Court.

3. Summary Final Judgment, therefore, is entered in favor of Defendants, ALLEN J. McKENNA and GARWOOD, McKENNA & McKENNA, P.A, and against Plaintiff, DONALD I. REHMAN, and Defendants, ALLEN J. McKENNA and GARWOOD, McKENNA & McKENNA, P.A., shall go hence without day. Costs will be taxed upon appropriate Motion and hearing.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida this ___ of March, 1995.

s/ Linda A. Gloeckner, Circuit Judge
LINDA A. GLOECKNER, CIRCUIT JUDGE

Appendix C

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail Delivery to **JOHN E. DUBOSE, JR., ESQUIRE,** Post Office Drawer 3751, Orlando, Florida 32802 and to **DONALD I. REHMAN, PRO SE**, 1390 Windy Ridge Court, Longwood, Florida 32750 this day of March, 1995.

_____

JUDICIAL ASSISTANT

APPENDIX D — ORDER OF CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT DATED APRIL 20, 1995

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO. 94-3776

DONALD I. REHMAN

Plaintiff,

vs.

GARWOOD, McKENNA & McKENNA, P.A., ALLEN J. McKENNA, THOMAS C. GARWOOD, JR. and THEODORE R. BAUMGARDNER,

Defendants.

ORDER GRANTING DEFENDANTS THEODORE R. BAUMGARDNER AND THOMAS C. GARWOOD JR.'S MOTION FOR SUMMARY JUDGMENT AND ENTERING SUMMARY FINAL JUDGMENT

THIS CAUSE having come before the Court on March 9, 1995 on Defendants THEODORE R. BAUMGARDNER and THOMAS C. GARWOOD, JR.'s Motion for Summary Judgment and the Court, having heard argument of Plaintiff and of Defendants' counsel, having reviewed the Court file, and otherwise being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED:

1. The Court makes no determination as to whether

Appendix D

Plaintiff's prior federal court action was a "supplemental action" as that term is referred to in 28 U.S.C. Section 1367. Defendants, THEODORE R. BAUMGARDNER and THOMAS C. GARWOOD, JR., have never been named as Defendants in any of Plaintiff's federal court actions and were not named as parties in the above-captioned action in this Court until September 16, 1994. Clearly the statute of limitations applicable to this action for defamation, *Florida Statutes* Section 95.11(4)(g), expired prior to the filing of Plaintiff's Amended Complaint on September 16, 1994 and such an amendment does not relate back to the filing of any previously filed Complaints. See *Frankowitz v. Proost*, 489 So. 2d 51 (Fla. 4th D.C.A. 1966); *Gray v. Executive Drywall, Inc.*, 520 So. 2d 619 (Fla. 2d D.C.A. 1988); and *R.A. Jones & Sons, Inc. v. Holman*, 470 So. 2d 60 (Fla. 3d D.C.A. 1985).

2. Summary Final Judgment, therefore, is entered in favor of Defendants, THEODORE R. BAUMGARDNER and THOMAS C. GARWOOD, JR., and against Plaintiff, DONALD I. REHMAN, and Defendants, THEODORE R. BAUMGARDNER and THOMAS C. GARWOOD, JR., shall go hence without day. Costs will be taxed upon appropriate Motion and hearing.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida this ___ of March, 1995.

s/ LINDA A. GLOECKNER, CIRCUIT JUDGE
LINDA A. GLOECKNER, CIRCUIT JUDGE

Appendix D

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail Delivery to JOHN E. DUBOSE, JR., ESQUIRE, Post Office Drawer 3751, Orlando, Florida 32802 and to DONALD I. REHMAN, PRO SE, 1390 Windy Ridge Court, Longwood, Florida 32750 this ___ day of March, 1995.

_____

JUDICIAL ASSISTANT

APPENDIX E — SUPREME COURT OF FLORIDA DECISION DATED APRIL 18, 1996

SUPREME COURT OF FLORIDA

District Court of Appeal,
5th District - No. 95-1086

CASE NO. 87,744

DONALD I. REHMAN

Petitioner/Appellant,

vs.

GARWOOD, McKENNA & McKENNA, P.A., ETC., ET AL.,

Respondents/Appellees.

Thursday, April 18, 1996

The Supreme Court of Florida does not have common law certiorari jurisdiction. Art. § 3, Fla. Const. The "'Petition for Common Law Certiorari will, therefore, be treated as a petition for discretionary review and/or appeal. *See* Fla. R. App. P. 9.040(c).

Because no jurisdictional basis has been alleged to support the petition for discretionary review of the appeal, this case is hereby dismissed.

The appeal is subject to reinstatement if jurisdiction is established on proper motion filed within fifteen days from the date of this order. *See* Art. V, § 3(b)(1), Fla. Const.

Appendix E

No motion for rehearing or for clarification may be filed in the Court addressed to the denial of the petition for discretionary review. *See* Fla. R. App. P. 3.330(d).

See Vetrick v. Hollander, 464 So.2d 552.

H

cc: Hon. Frank J. Habershaw, Clerk
Hon Fran Carlton, Clerk
Hon. Linda A. Gloeckner, Judge

Mr. Donald I. Rehman
Mr. John E. DuBose, Jr.

A True Copy

TEST:

By

Sid J. White
Clerk Supreme Court

APPENDIX F — SUPREME COURT OF FLORIDA DECISION DATED JUNE 10, 1996

SUPREME COURT OF FLORIDA

District Court of Appeal,
Fifth District
No. 95-1086

CASE NO. 87,744

DONALD I. REHMAN

Appellant.

v.

GARWOOD, McKENNA & McKENNA,
P.A., etc., et al.,

Appellees.

MONDAY, JUNE 10, 1996

Appellant's Motion for Reinstatement filed in the above cause is hereby denied.

OVERTON, SHAW, HARDING, WELLS and ANSTEAD, JJ., concur

TC
cc: Hon. Frank J. Habershaw, Clerk
Hon Fran Carlton, Clerk
Hon. Linda A. Gloeckner, Judge

Appendix F

Mr. Donald I. Rehman
Mr. John E. DuBose, Jr.

A True Copy

TEST:

By

Sid J. White
Clerk Supreme Court

APPENDIX G — MOTION FOR ATTORNEYS FEES

IN THE SUPREME COURT OF FLORIDA

CASE NO. 87,744

5TH D.C.A. CASE NO.: 95-1086

DONALD I. REHMAN

Petitioner/Appellant

vs.

GARWOOD, McKENNA & McKENNA, P.A., etc., et al.,

Respondents/Appellees.

MOTION FOR ATTORNEYS FEES

Respondents, GARWOOD, MCKENNA & MCKENNA, P.A., ALLEN J. MCKENNA, ESQUIRE, THOMAS C. GARWOOD, JR., ESQUIRE and THEODORE R. BAUMGARDNER, ESQUIRE, by and through their undersigned attorneys, move the Court for entry of an Order awarding attorneys fees pursuant to *Florida Statutes* Section 57.105(1) and in support thereof would state as follows:

1. This case involves the Petition for Discretionary Review and/or Appeal filed by Petitioner, DONALD I. REHMAN. Mr. Rehman's Petition seeks review of the Fifth District Court of Appeal's decision entered February 20, 1996 affirming summary judgments entered in favor of the Respondents in the trial court. The Fifth District Court of Appeal's decision affirms those summary judgments by simply stating "PER CURIAM AFFIRMED."

2. This Court has long held that it does not have subject matter jurisdiction over decisions of district courts of appeal rendered without opinion or citation but merely rendered with the words 'per curiam affirmed". *See Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980); *Dodi Pub. Co. v. Editorial America S.A.*, 385 So. 2d 1369 (Fla. 1980); *Robles Del Mar, Inc. v. Town of Indian River Shores*, 385 So. 2d 1371 (Fla. 1980); *Jollie v. State*, 405 So. 2d 418 (Fla. 1981); *The Florida Star v. B.G.F.*, 530 So. 2d 286 (Fla. 1988).

3. The filing of a Petition for Discretionary Review and/or Appeal in a case where the district court has entered a "per curiam affirmed" opinion is frivolous as a matter of law since there is no justiciable issue of either law or fact regarding the absence of this Court's subject matter jurisdiction.

4. *Florida Statutes* Section 57.105(1) provides as follows:

> The court shall award a reasonable attorney's fee to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney in any civil action in which the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the complaint or defense of the losing party; provided, however, that the losing party's attorney is not personally responsible if he or she has acted in good faith, based on the representations of his or her client. If the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the defense, the court shall also award pre-judgment interest.

5. This statute is mandatory, requiring a court to award the prevailing party attorney's fees in any action in which there is a complete absence of a justiciable issue of either law or fact. *See e.g. Sykes v. St. Andrew's School*, 625 So. 2d 1317 (Fla. 4th D.C.A. 1993).

6. *Florida Statutes* Section 57.105(1) has been construed to apply to appeals where there is no justiciable issue on appeal. *See Branch v. Charlotte County*, 627 So. 2d 577 (Fla. 2d D.C.A. 1993); *Sykes, supra; Parker v. Parker*, 585 So. 2d 328 (Fla.4th D.C.A. 1991).

7. Because this Court clearly lacks subject matter jurisdiction to entertain discretionary review and/or appeal of a district court's decision rendered without opinion or citation, the filing of a such a Petition for Discretionary Review and/or Appeal is frivolous and these Respondents are entitled to recover their reasonable attorneys fees in defending the matter.

WHEREFORE Respondents, GARWOOD, MCKENNA & MCKENNA, P.A., ALLEN J. MCKENNA, ESQUIRE, THOMAS C. GARWOOD, JR., ESQUIRE and THEODORE R. BAUMGARDNER, ESQUIRE, respectfully move the Court for entry of an Order awarding attorneys fees.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail Delivery to DONALD I. REHMAN, 1390 Windy Ridge Court, Longwood, Florida 32750 this 29 day of April, 1996.

Appendix G

s/ John E. Dubose, Jr.,
JOHN E. DUBOSE, JR., ESQUIRE
WOOLFOLK, ESTES, KEOUGH
& DUBOSE, P.A.
Landmark Center One
315 East Robinson St., Suite 555
Post Office Drawer 3751
Orlando, Florida 32802-3751
(407) 849-6580
Florida Bar No. 0752037
Attorney for Respondents

APPENDIX H — SUPREME COURT OF FLORIDA ORDER DATED JULY 19, 1996

SUPREME COURT OF FLORIDA

CASE NO. 87,744

DAVID I. REHMAN

Petitioner,

v.

GARWOOD, MCKENNA & MCKENNA, P.A., ETC., ET AL.,

Respondents.

FRIDAY, JULY 19, 1996

Upon consideration of the Motion for Attorney's Fees filed in the above styled cause by the attorney for Respondents',

IT IS ORDERED that said Motion is granted and said attorney is allowed a fee of one thousand dollars ($1,000.00) for services in this Court, said sum to be paid to said attorney by Petitioner.

OVERTON, SHAW, HARDING and WELLS, JJ., concur
ANSTEAD, J., dissents

H

cc: Mr. Johnny Euell DuBose, Jr.
Mr. Donald I. Rehman

Appendix H

A True Copy

TEST:

By

Sid J. White
Clerk Supreme Court

Supreme Court, U.S.
FILED
SEP 10 1996
CLERK

(3)

No. 96-197

In The

Supreme Court of the United States

October Term, 1995

Colonel DONALD I. REHMAN (Ret.),

Petitioner,

v.

GARWOOD, MCKENNA, MCKENNA, and WOLF, P.A., An Orlando FL Law Firm, ALLEN J. MCKENNA, Esquire, THOMAS C. GARWOOD, JR., Esquire & THEODORE R. BAUMGARDNER, Esquire,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Florida

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

COLONEL DONALD I. REHMAN (Ret.)
1390 Windy Ridge Court
Longwood, FL 32750-4501
(407) 260-0690
Petitioner Pro Se

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

1996

QUESTIONS PRESENTED COMMENT

Respondents in their BRIEF IN OPPOSITION, show only one (1) of the nine (9) questions that were presented in the PETITIONER'S PETITION FOR WRIT OF CERTIORARI. In tabular form this is the comparison:

Subject	PETITIONER'S PETITION	RESPONDENTS' REPLY BRIEF
Per curiam affirmed Orders	Ques 1	None
Pro Se Status	Ques 2	None
Art 6, U.S. Const	Ques 3	None
28 U.S.C. § 1367(d)	Ques 4	Ques I
Collateral Estoppel	Ques 5	None
Law of the Case	Ques 6	None
Supplemental Jurisdiction	Ques 7	None
Additional Parties	Ques 8	None
Post-conviction judicial attributes	Ques 9	None
Jurisdiction	None	Ques II

LIST OF ALL PARTIES

All parties appear in the caption of the case on the cover page.

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RESPONDENTS WAIVE OBJECTION TO SOME QUESTIONS PRESENTED

Under Rule 15-2, U.S. Supreme Court Rules, effective October 2, 1995, *"Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived unless called to the Court's attention in the brief in opposition."*

THIS COURT HAS JURISDICTION

On the matter of Jurisdiction, Respondents assert that because Rehman did not come here within 90 days of the final order from the Fifth District Court of Appeal (5DCA) State of Florida, and went instead to the Supreme Court of Florida, he loses his right to appeal here. However, it is the policy of this Court that when a case is timely before the Supreme Court of Florida, no matter even in a jurisdictional question stage, the Supreme Court of the United States will not permit any Application to Extend the Time to File a Petition for Writ Of Certiorari, returns all such applications, and declares that once a final order is filed at the Supreme Court of Florida (even if that Court rejects for lack of jurisdiction) there is 90 days thereafter in which to file a Certiorari Petition at this Court.

At **Appendix A** hereto is a copy of the cover page of an APPLICATION sent to this Court by Rehman in another case that, like this one, was then before the Supreme Court of Florida on a jurisdictional question. In that application Rehman expresses the concern that it could be

more than 90 days from the date of the final 5DCA order when the Supreme Court of Florida finally determines whether or not it has jurisdiction in the case; and Rehman was concerned that a subsequent Certiorari Petition to this Court would then be declared untimely. As shown by this Court's July 16, 1996 letter at **Appendix B** hereto, in effect this Court considers as premature any appeal to this Court until after the Supreme Court of Florida determines whether or not it has jurisdiction in a case appealed to it. Since Rehman had already been instructed by this Court on its policy, by the **Appendix B** hereto letter, he did not submit any Application or Petition in this instant case at bar because he knew such action would then be frivolous. What is an affront to this Court, by Officers of this Court, the RESPONDENTS in this instant case at bar who are all Attorneys, and their Counsel, is that on July 22, 1996, Rehman faxed this Court's July 16th letter, directly to the respondents because they are Counsels in that case. See copy of fax at **Appendix C** hereto, including electronic receipt of fax transmission. Respondents, despite fully knowing of this Court's policy, sought to perpetrate a hoax upon this Court, with about ten (10) pages in their OPPOSITION BRIEF devoted to why and how this Court supposedly lacks jurisdiction over Rehman's appeal as being supposedly untimely. This Court apparently some time ago took a "common sense", reasonable, conserving of judicial resources, and saving of litigants' money approach, by not allowing applications and petitions to be filed here when any matter is/was before the Supreme Court of Florida; and it makes no difference whether the Supreme Court of Florida ultimately declines to exercise jurisdiction. This procedure

makes for an orderly and fair process. Although RESPONDENTS were in full knowledge of those procedures, they concealed such knowledge from this Court, thus making those jurisdiction assertions, in their OPPOSITION BRIEF, outrageously frivolous.

APPELLATE ATTORNEY'S FEES ISSUE

Respondents go to great lengths to mention and include documents in their BRIEF that the Supreme Court of Florida imposed Appellate Attorney's Fees upon Rehman solely for filing a PETITION there. That does not change the jurisdiction issue before this Court. The Appellate Attorney's Fees were imposed without findings of fact, without findings of law and violates the standards set in the Supreme Court of Florida's own case law. Further, one of the Justices, Justice Harry L. Anstead dissented from the Attorney's Fees Order at Appendix H, page 19a, in Respondents' BRIEF. That entire issue is still pending reconsideration before that Court, and Rehman is hopeful that they will reverse their Fees imposition order. At **Appendix D** is a copy of a Supreme Court of Florida order where Rehman filed a petition in that Court under identical circumstances as in this case at bar, on a "per curiam" order from 5DCA; yet the Supreme Court of Florida denied Appellate Attorney's Fees **(App. E)** to the attorneys in that case who are the Respondents in this case here. In any event, it is not necessary to debate the issue now, since the question before this Court is not whether the Supreme Court of Florida inappropriately

and unjustly summarily invoked Appellate Attorney's Fees; rather, it is that the United States Supreme Court has jurisdiction over Rehman's Appeal. It is doubtful that there is any United States Supreme Court Justice who ever served, who is now serving, or who will ever serve in the future at this Court, who would ever affirm on appeal the Supreme Court in any State "fining" a pro se (which, with no findings of fact, with no findings of law, and in violation of its own case law) who respectfully in an articulate fashion brought a Petition/Application before that Lower Tribunal, paid a $250 docketing fee, in which that Tribunal then found that it supposedly lacked subject matter jurisdiction. The rhetorical question in that matter is whether citizens of the United States shall be fined for merely respectfully petitioning for justice those Courts that were created to protect and preserve the people's State and Federal constitutional rights, and to provide "justice for all".

ERRORS/OMISSIONS IN RESPONDENTS' STATEMENT OF THE CASE

Rehman alleged in his Federal Trial Court case that he was dismissed for engaging in 31 U.S.C. § 3730(h) "Protected Activity". He never alleged, as Respondents misstate on page 3, that discharge occurred because of contact with the U.S. Government, because the employer knew that was about to occur and made a "preemptive strike" and fired him. The erroneous and intentionally defamatory "Personnel Separation Notice" (Page 3 of Respondents' BRIEF) purposely created and given by Respondents here, to the U.S. Government, to maliciously

discredit Rehman, was never recalled by Respondents and replaced with any corrected version; and Respondents never disclosed any error to the U.S. Government. The Federal District Court ruled with respect to the 108 letters (Page 4 of Respondents' BRIEF) that the letters were not defamatory with respect to *ECC International Corp.*, the Defendant in that Federal case (who had not written the letters); however, the State Court Judge in the Defamation case against the Attorney Respondents here, ruled there were genuine issues of material fact and scheduled State Court trial (See Appendices J and K in Rehman's Certiorari Petition).

RESPONDENTS WAIVE ARGUMENTS

RESPONDENTS say on Page 16: *"Respondents are confident that no constitutional rights have been violated in this regard in Mr. Rehman's Florida action and will not comment on them any further"*. They completely ignored issues such as Florida State jurisprudence as regards "collateral estoppel", and numerous other issues/"questions presented" that were raised in Rehman's PETITION; thus they thereby waive and concede arguments; which is grounds in and of itself to grant Rehman's PETITION. Further, almost 100% of all their case law cited pertains only to jurisdiction subject matter issue.

PUBLIC CONCERN ISSUES

Rehman's PETITION has numerous subject areas upon which there appear to be absolutely no Federal case law.

An opinion from this Court on those momentous legal issues, would materially advance Federal jurisprudence and be a monumental public service.

Respectfully submitted,

DONALD I. REHMAN
1390 Windy Ridge Court
Longwood, FL 32750
(407) 260-0690
Petitioner Pro Se

APPENDIX A

No. [ORIGINAL]

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

Colonel DONALD I. REHMAN (Ret.), **Petitioner,** **vs.** **ECC International Corp., et al.,** **Respondents.**	[Fla.Sup.Ct. Case Nr. 87,969] [5DCA CASE Nr. 95-1758] [9th Judicial Cir. Case Nr. Cl 94-1586]

APPLICATION TO EXTEND THE TIME
TO FILE A
PETITION FOR WRIT OF CERTIORARI

or alternatively

APPLICATION FOR AN ORDER, DECLARING THAT THE TIME ALLOWED TO FILE A PETITION FOR WRIT OF CERTIORARI AT THE SUPREME COURT OF THE U.S. SHALL NOT EXPIRE UNTIL 90 DAYS AFTER THE Fla.SUP.Ct. MAKES ALL DETERMINATIONS IN CASE Nr. 87,969

Colonel Donald I. Rehman (Ret.)
1390 Windy Ridge Court
Longwood, FL 32750
(407) 260-0690
Petitioner Pro Se

APPENDIX B

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

July 16, 1996

Colonel Donald I. Rehman
1390 Windy Ridge Court
Longwood, FL 32750

RE: Rehman v. ECC International Corp., et al.,

Dear Mr. Rehman:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case was postmarked federal express and received June 16, 1996. The application is returned for the following reason(s):

Your application indicates Florida Supreme Court case No. 87969 is still pending before that Court. Once a final order is filed in that case 87969 you have 90 days within which to file a certiorari petition to this Court. Rule 13.1

Sincerely,
William K. Suter, Clerk
By: /s/ (Illegible)

Sandra Elliott
(202) 479-3025

Enclosures

APPENDIX C

[LOGO]

From: Colonel Donald I. Rehman (Ret.)

Questions? Call (407) 260-0690

1390 Windy Ridge Court
Longwood, Florida 32750

To: **Allen J. McKenna, Esquire**
&
Theodore R. Baumgardner, Esq.

Counsel for Respondents in
87,969
Counsel for ECC

Company: Garwood, McKenna, McKenna,
& Wolf, P.A.
(407) 841-9496,
(407) **841-0533 [fax]**

ECC International Corp.
(407) 859-7410,
(407) 851-1871 [fax]

Address: 731 N. Garland Avenue,
Suite 300
Orlando, Florida 32801

2001 W. Oak Ridge Road
Orlando, Florida 32809-3803

Date: July 22, 1996

Time: 3:26 PM

Pages: (including this one) 2

Message: Attorney Allen J. McKenna &

ATTORNEY THEODORE R. BAUMGARDNER:
SUBJECT: July 16, 1996 Letter from United States Supreme Court.

I received the attached letter from the United States Supreme Court, but there is no indication in it that you were furnished with a copy; thus I am doing so.

Sincerely,

/s/ D. I. Rehman
Donald I. Rehman

1 Attachment

[LOGO]

SUPREME COURT OF THE UNITED STATES
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July 16, 1996

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Sincerely,
William K. Suter, Clerk
By: /s/ (Illegible)
Sandra Elliott
(202) 479-3025

Enclosures

C4

TRANSMISSION VERIFICATION REPORT

TIME : 07/22/1996 10:03
NAME : DON REHMAN
FAX : 4072600690
TEL : 4072600690

DATE,TIME	07/22 10:02
FAX NO./NAME	8410533
DURATION	00:00:49
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

TRANSMISSION VERIFICATION REPORT

TIME : 07/22/1996 10:05
NAME : DON REHMAN
FAX : 4072600690
TEL : 4072600690

DATE,TIME	07/22 10:04
FAX NO./NAME	8511871
DURATION	00:00:49
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

APPENDIX D

IN THE SUPREME COURT OF FLORIDA

DONALD I. **REHMAN,** **PETITIONER/APPELLANT** **Plaintiff,** **vs.** **ECC INTERNATIONAL CORP.,** A Defense Contractor having an Orlando, FL Facility EVELYN J. **ANDREWS,** individually and in her ECC capacity, DANIEL **CARRILLO, JR.,** individually and in his ECC capacity, GEORGE L. **FRYE, JR.,** individually and in his ECC capacity, AJIT W. **HIRANI,** individually and in his ECC capacity, GEORGE W. **MURPHY,** individually and in his ECC capacity, ANTHONY C. **POLK,** individually and in his former ECC capacity, and JERRY D. **ROBBINS,** individually and in his ECC capacity, **RESPONDENTS/APPELLEES/** **Defendants.**	**CASE NO.: 87,969** [5DCA CASE NO.: 95-01758] [9th Cir. Ct. Case Nr. CI 94-1586]

Donald I. Rehman
1390 Windy Ridge Court
Longwood, FL 32750
(407) 260-0690
APPELLANT/ Petitioner/Plaintiff Pro Se

D2

JURISDICTIONAL BRIEF of Appellant/Petitioner[1]

[Notice of Appeal was filed at 5DCA on May 2, 1996]

(Filed May 13, 1996)

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[1] **Or Alternatively, if Rehman's Appeal is dismissed before this Jurisdictional Brief is filed, then, under Fla.R.App.P. 9.040(c):** ***MOTION FOR REINSTATEMENT if the dismissal order so permits.***

APPENDIX E

Supreme Court of Florida

TUESDAY, AUGUST 20, 1996

DONALD I. REHMAN, Appellant, v. ECC INTERNATIONAL CORP., et al., Appellees.	*	CASE NO. 87,969 District Court of Appeal, 5th District – No. 95-1758

****

Appellant's Motions for Reinstatement filed in the above cause are hereby denied.

Appellees' Motion for Attorneys' Fees are hereby denied. OVERTON, SHAW, GRIMES, HARDING and ANSTEAD, JJ., concur

A True Copy

TEST:

Sid J. White [SEAL]
Clerk, Supreme Court

TC

cc: Hon. Frank J. Habershaw, Clerk
Hon. Fran Carlton, Clerk
Hon. Linda A. Gloeckner, Judge

Mr. Donald I. Rehman
Mr. Theodore R. Baumgardner
Mr. Allen J. McKenna